

(VOLUME 4 OF 10)

SUSAN K. THOMAS
Court Reporter
Court of Common Pleas
Allen County Justice Center
P.O. Box 1243
Lima, Ohio
45802

The HONORABLE JEFFREY L. REED, Judge of the Court of Common Pleas
of Allen County, Ohio, presiding;
TERRI L. KOHLRIESER and ANTHONY J. MILLER, Assistant Prosecuting
Attorneys, Allen County, Ohio, present on behalf of the State of Ohio;
JON PAUL RION, Attorney at Law, Suite 2150, 130 West Second Street,
P.O. Box 10126, Dayton, Ohio 45402, present on behalf of the defendant;

A P P E A R A N C E S

STATE OF OHIO	*	CASE NO. CR2014 0139
Plaintiff	*	
-VS-	*	TRANSCRIPT - JURY TRIAL
MARKELUS Q. CARTER	*	
Defendant	*	SEPTEMBER 8 - 22, 2015

IN THE COURT OF COMMON PLEAS OF ALLEN COUNTY, OHIO

2016 MAR 20 PM 3:05

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COMMON PLEAS COURT

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NOTE: THE FOLLOWING IS A LIST OF EXHIBITS OFFERED BY THE PARTIES AND RULED UPON BY THE COURT FOR ADMISSION INTO EVIDENCE. SAID EXHIBITS HAVE BEEN FILED WITH THE ALLEN COUNTY CLERK OF COURT'S OFFICE FOR TRANSFER TO THE THIRD DISTRICT COURT OF APPEALS. HOWEVER, ANY EXHIBIT NOTED WITH AN ASTERISK (*) WAS NOT FILED WITH THE TRANSCRIPT AND SAID EXHIBITS ARE HELD AT THE ALLEN COUNTY COMMON PLEAS COURT AND ARE AVAILABLE UPON REQUEST.

STATE OF OHIO'S EXHIBITS -

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2 - DVD OF HOLDING ROOM CELL INCIDENT (SECOND VIEW)
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3 - NOTE FROM JURY TO THE COURT;

4 - COURT'S ORDER TO SUPPLEMENT RECORD WITH ATTACHED
A.C.S.O. OFFENSE REPORTS;

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1 THE COURT: Back on the record in Case
2 Number CR2014 0139, State of Ohio -vs- Markelus Q. Carter. We're
3 reconvening. The defendant is present in Court with his attorney. The State
4 is present. The jurors have returned from the noon recess.
5 Welcome back, ladies and gentlemen of the jury. It was brought to my
6 attention, and I don't want to make a big deal about this, about some logistics.
7 When some of you went to lunch yesterday and came back and wanted to eat
8 up here and the gate was down, which it always is over the lunch hour, and
9 you weren't able to get back in, well, I apologize for that. In the future now if
10 you're going to leave and come back over the lunch hour let us know and
11 we'll make sure that security is aware and to be looking out for you because I
12 don't want you out there having to eat your lunch out in the outer lobby. So,
13 again, I apologize for all of that. We appreciate and we need the input if
14 there's something that's unrelated to the case that's making the experience
15 negative, well, let us know and we'll try to improve upon that. We've been
16 having jury trials up here for I don't know how many hundreds of years, but
17 there's always room for improvement. It's never happened before. The fact
18 that it did, well, we'll try not to make it happen again.
19 All right. So, we'll continue with the State's case. The State may call
20 their next witness.
21 MRS. KOHLRIESER: Yes. The State
22 would call Detective Don Marik.
23 THE COURT: Detective Marik.

1 WHEREUPON, called to appear as a witness in this proceeding was one:

2 **DETECTIVE DONALD MARIK**

3 who, having been duly sworn by the bailiff herein, testified as follows:

4 BAILIFF: He has no objection.

5 THE COURT: Okay. Yea, the cameras

6 left when they heard you were coming. No.

7 **DIRECT EXAMINATION**

8 **BY MRS. KOHLRIESER:**

9 Q All right. Will you state your name for the record, please?

10 A My name is Don Marik. I'm a detective formerly with the Lima City

11 Police and currently with the Shawnee Township Police Department.

12 Q How long have you been with the Shawnee Township Police

13 Department?

14 A I started my fourth year, and I was with the City for thirty-three.

15 Q Okay. When did you retire from the City?

16 A 2012.

17 Q What division were you working in when you retired from, well, when

18 you say City, you mean the Lima Police Department?

19 A Yes.

20 Q From the City.

21 A The City of Lima. I was a detective there.

22 Q And how long were you a detective?

23 A It was 1987 when I was promoted.

1 Q Okay. So, awhile?

2 A Yes.

3 Q All right. Now, was there a time while you were in the detective
4 bureau, particularly in the years of 2008/2009, that you were actually
5 assigned to do work in the identification section as well?

6 A Yes.

7 Q And how was it that you came to be in that capacity?

8 A There was a shift in personnel. One of the identification officers had
9 accepted a job with the Bureau of Criminal Investigation. So, I was
10 temporarily placed in his position until that position could be filled through the
11 Civil Service.

12 Q Now, let's talk about what that means. As an I.D. officer, in that
13 capacity, what kinds of things were you tasked with doing?

14 A It was multi-tasking - processing crime scenes; taking care of the
15 property room; photographing prisoners; fingerprinting prisoners.

16 Q Now, when you say processing a crime scene, what do you mean by
17 that?

18 A If I was called to a particular crime scene I was there to collect
19 evidence, take photographs, properly document, and make reports.

20 Q Okay. And did you receive any specialized training to do that?

21 A Over the years I spent many classes at the Police Officer's Training
22 Academy in London, Ohio for many such investigations.

23 Q Did you learn techniques about preserving evidence and the proper

1 handling of evidence so as not to destroy any potentially identifying
2 information?
3 A Yes.
4 Q And on the morning of February 23rd, 2009 were you called to a scene
5 at 436 East McKibben here in Lima?
6 A I was.
7 Q And what was the nature of that call?
8 A There was a shooting at that location and I was called to start the
9 processing, photographing, and collection of evidence at that scene.
10 Q Were you informed that someone had actually been killed?
11 A Yes.
12 Q And did you, in fact, go to 436 East McKibben?
13 A Yes.
14 Q And what did you observe upon arriving?
15 A I went to that location. I remember, because the address was on
16 McKibben Street, I went to East McKibben and I noticed that the Police had it
17 cordoned off with police line tape, which means I couldn't come up that way.
18 This house sat somewhat up on a hill. So, I went around the block, which
19 would have put me on Pearl Street, and then I came in through the alley and
20 was able to park the van in the alley a distance away from the crime scene.
21 Q Okay. That was actually going to be my next question. You were
22 actually driving a van?
23 A Yes.

1 Q Was that a van used for the Identification Bureau?

2 A That's where -- the equipment was kept in there.

3 Q When you say equipment, like what kinds of things would you need?

4 A Cameras, ladders, collection items, anything that was related to the

5 collection of property at a crime scene.

6 Q Gloves?

7 A Yes.

8 Q And by gloves I mean like latex gloves for you to touch things?

9 A Yes.

10 Q Or whatever - surgical type of gloves you're talking about. Bags to

11 place evidence in and that type of thing?

12 A You name it, we try to put it in there.

13 Q Okay. So, you drove that van and you actually went around and up the

14 alley there?

15 A Yes.

16 Q From Pearl Street?

17 A Yes.

18 Q Okay. Once you parked and you got into the actual perimeter of the

19 crime scene what did you observe?

20 A The responding officers had taped off, like I said, with yellow police

21 tape an area quite a distance from where I could see the deceased. They did

22 that on purpose so that, number one, to keep people out and, number two, to

23 preserve any evidence that might be there. As I approached there were

1 officers there at the scene. As I approached, which would have been from
2 the south to the north, things that I noticed I wanted to look at fairly quick
3 because crime scenes on the outside are subject to deterioration through
4 atmospheric conditions. In other words, I've been to crime scenes where it
5 was perfectly fine and then it started raining or there was no snow on the
6 ground and all of a sudden the snow covered up your crime scene. So, I
7 wanted to make sure that because it was outside that I could see things and
8 possibly measure, photograph, and collect before anything would happen.
9 Luckily, it was snow covered. It was very cold. It was ten/fifteen degrees. But,
10 was a clear day. I remember that. I didn't think it was going to snow. But,
11 still, as I approached I wanted to see if I could see things. From my
12 experience at shootings you're looking for items left behind, items brought to
13 the crime scene, items left behind, tracks in the snow, footprints, car tracks in
14 the snow, anything that could have relevance to the crime.
15 Q So, as you're approaching is that what you're kind of looking for? Are
16 you stepping carefully? Are you just kind of taking it slow and taking in the
17 scene, so to speak?
18 A You try not to have tunnel vision. You could see where the person was
19 laying, but you also keep your eyes open to the left and to the right just to see
20 if something is out of place to the left, or to the right, and you look beyond the
21 crime scene. You try to get a bigger picture of the whole situation.
22 Q So, if I understand you right, Detective Marik, I think the obvious place
23 to look would be at what turned out to be Kenneth Warrington's body;

1 correct?

2 A Yes.

3 Q Okay. It would be to look at the body. But, you're talking about you

4 can't just focus on that. You've got to see the big picture?

5 A Yes.

6 Q Okay. And did you notice the ground conditions?

7 A It was snow covered. It wasn't a recent snow. The snow in the alley

8 was packed by vehicles driving up and down the alley. I'm not sure when it

9 snowed. It could have snowed a couple of days prior to that. There were

10 some areas that looked like melting had already started. There wasn't a

11 substantial amount of snow. I remember that. There might have been an

12 inch, inch and a half, of snow on the ground, if that. But, still enough that it

13 covered the ground and the alley.

14 Q All right. So, as you're coming up, I guess closer to the most obvious

15 point of the crime scene, being Mr. Warrington's body, what do you do?

16 You're taking all of this in and you finally get up to where Mr. Warrington is.

17 What do you go about doing then?

18 A You keep looking and scanning. When I approached Mr. Warrington I

19 could see items that were going to be measured later on and graphed and

20 then collected - things being shell casings, and it turned out later spent

21 bullets. I noticed near the side door, which was a screen door, it was propped

22 open. This would have been on the west side of the house. The door was

23 propped open with an Igloo ice chest. There was a gym bag there. I also

1 noticed that the glass from the storm door was shattered. It was safety glass
2 and there were pieces of glass everywhere. Then as you got closer you
3 could see that there were keys in the door. There were obviously
4 indentations in the door where something had struck it, projectiles of some
5 type.
6 Q Now, once you're able to kind of take in everything do you get some
7 kind of briefing from the officers on site, or at least one of the officers on site?
8 A Yes.
9 Q Okay.
10 A I don't recall which officer it was, but they responded to this area
11 because of shots fired and they had been there earlier in the evening, and
12 then obviously another call had come in and that's when apparently
13 somebody had found Mr. Warrington outside and then called the police a
14 second time.
15 Q Okay. When you were walking up and you're looking, you know, for
16 obvious footprints or things of that nature, did you find anything that stuck out
17 in your mind as unusual as far as in the snow, possible suspect footprints, or
18 that type of thing?
19 A I couldn't. There were tracks in the snow from vehicles. I couldn't
20 determine if that was from vehicles related to the police, related to vehicles
21 traveling up and down that alley the day before, or the night of. It was hard to
22 tell. As far as footprints go, because the snow was packed down you really
23 couldn't make a clear determination of somebody coming up to the crime

1 scene or somebody leaving the crime scene. You just couldn't tell. Sure,
2 there were footprints there. But, obviously I couldn't determine who left them
3 there.
4 Q Okay. Are there times, you know, in your experience as a detective,
5 as a street officer, as an I.D. officer, where you have had footprints in fresh
6 snow that you've been able to follow and solve a crime?
7 A Absolutely.
8 Q Okay. But, this was not that?
9 A No.
10 Q All right. So, now you've assessed the scene and you've talked to the
11 officer. You, as an I.D. officer, what do you start actually doing in order to
12 preserve the scene and collect from it? What's the first steps you take?
13 A I leave the scene alone. That's one thing. With no disrespect to the
14 deceased, sometimes you have to do that and then process the crime scene,
15 and then take photographs, and then collect your evidence, and then do what
16 you have to do after that. The first thing I did was I got my digital camera and
17 I started taking photographs, and quite a few photographs I might add.
18 Q What all kinds of things do you photograph?
19 A You try to photograph from a distance to get an overall picture of the
20 crime scene. You try to do it from different directions and then you proceed to
21 go closer, and closer, and closer to get an idea of what the crime scene
22 actually looks like. You want to get the surrounding areas - what the alley
23 looked like; maybe houses next to the specified home; vehicles; et cetera, et

1 cetera.

2 Q Okay. So, is it fair to say you took a number of photographs?

3 A Yes.

4 Q Okay. Do you also then measure the location of various items?

5 A Yes.

6 Q Do you photograph those measurements that you take?

7 A Yes.

8 Q Once you get done photographing everything, well, I shouldn't say

9 done, but once you get your first few sets of photographs and things of that

10 nature and you're getting ready to actually pick up an object that you're going

11 to collect as evidence, how do you identify that? Do you have those little tent

12 type of things? I think people have seen that before.

13 A We have items, and they're tents. They're plastic items. They're very

14 small. They usually have a number on them and some type of measuring on

15 the bottom of them so you can get an idea of how big this item is that you're

16 picking up - something that you can compare with. You photograph it with

17 and without and then you document it.

18 Q Okay. The tent, does that help you keep up with, for instance, you

19 may have fifty bullets that you find, or, fifty casings you find at a crime scene,

20 you know, if there's some big to do going on. Would you tent each one of

21 those before you collected it?

22 A You try to.

23 Q Okay. And the purpose of that being so you know where this one was

1 versus this one?

2 A Right.

3 Q Okay. All right. Let's go ahead and show some pictures before we
4 move on to the next stage. I'm going to hand you a large stack of pictures, so
5 bear with me here a second. They're not all in numerical order. I'm going to
6 hand you State's - and for the record, I've shown these to Mr. Rion prior -
7 State's exhibit '3', '4', '5', '7', and then '11' through '67'. Have you had an
8 opportunity to review these before coming in today?

9 A Yes.

10 Q And this is not all of the pictures that you took; correct?

11 A Correct.

12 Q It's largely just what we selected to be illustrative?

13 A Yes.

14 Q Take a look at those and tell me when you're done.

15 (WHEREUPON, witness reviewed exhibits.)

16 Q Okay. Now, the entire stack of exhibits that I gave you there, those are
17 all photographs; correct?

18 A Yes.

19 Q Who took those photographs?

20 A I did.

21 Q And do they truly and accurately reflect the scene as you found it on
22 February 23rd of 2009?

23 A Yes.

1 Q Okay. Now, let's go through these. All right. State's exhibit '3' we've
2 seen a couple of times. But, seeing as how you took the picture, can you tell
3 us what we're seeing there?
4 A This is 436 East McKibben Street. That would be the front of the
5 home. It faces McKibben Street. It would face north.
6 Q Okay. State's exhibit '4'? What do we see here?
7 A That is the same location, with the home next door. As you can tell, it
8 sits up on a hill. That's also facing north, but it also shows the west side of
9 the house also. That shows the alley and the tracks in the snow.
10 Q Okay. Now, Detective Marik, it's a little darker here, but do you see
11 where my pen is practically in the middle of the picture?
12 A Yes.
13 Q Okay. This door, is this the door you talked about was propped open?
14 A Yes.
15 Q Okay. And even though it's kind of difficult to see in this picture, what
16 is on the other side of that propped open door?
17 A Mr. Warrington.
18 Q Okay. And then is this a car parked here?
19 A Yes.
20 Q State's exhibit '5'. What are we looking at here?
21 A This picture was taken south of this house at 436 East McKibben
22 Street. Again, it shows the south side of the house. It shows the west side of
23 the house. The door is propped open. Mr. Warrington would be on the

1 concrete pad just in front of this four, four door. On the south side would be
2 what we learned to be Mr. Warrington's pick-up truck.
3 Q When you say the south side, do you mean what appears to be the
4 rear of the home there?
5 A Yes.
6 Q In front of this, well, what looks like a little wooden shed here?
7 A Yes.
8 Q Okay. And you said you learned later that that was actually Mr.
9 Warrington's vehicle?
10 A Yes.
11 Q Let's skip '7' for right now. State's exhibit '11'. Again, what are we --
12 what are we looking at here?
13 A Again, this is 436 East McKibben Street. It's a little closer. I took it
14 probably towards the street. This shows the alley. It shows the door being
15 propped open. Right in front of the car, closer to the house, would be Mr.
16 Warrington on the ground, on the patio.
17 Q Okay. Now, is this the crime scene tape that we were talking about
18 here?
19 A Yes.
20 Q Okay. So, you appear to be on the outside of the perimeter taking this
21 shot?
22 A Yes.
23 Q Okay. Now, do you see in the background here where my finger is

1 just beyond the car? Is this another house back here?
2 A I believe it's a garage.
3 Q Well, the smaller structure is a garage. Does this appear to be a
4 house?
5 A Yes, that would be a house that's on Pearl Street.
6 Q Okay. So, their, I guess, rear yards would about each other?
7 A Yes.
8 Q Now, I don't know whether you know, Detective Marik, I know it's been
9 a long time since you've been a street officer for the Lima Police Department,
10 but do you know if that house is still there?
11 A That I don't know.
12 Q Okay. But, it was there, obviously, on February 23rd?
13 A Yes.
14 Q All right. State's exhibit '12'. Again, what are we looking at in this
15 shot?
16 A This picture I was north of the house. I was in the north/south alley.
17 You can see my van parked with the lights on.
18 Q This right here where my finger is, about in the middle of the picture?
19 A Yes. Yes.
20 Q All right.
21 A This shows the amount of tracks in the alley, the crime scene tape and,
22 of course, it shows how close 436 East McKibben Street was to the next
23 house just west of it, as you can see from this red car. You can even see the

1 yellow police tape close to that house on the west side of this alley.

2 Q Okay. State's exhibit '13'.

3 A This is a photograph I took while I was standing in the alley. This is the

4 west side of the home. This is how it was when I got there. Mr. Warrington is

5 on this concrete pad close to the house, laying in front of the car. The door is

6 propped open with items - the igloo, the gym bag, and the interior door is how

7 I found it.

8 Q Okay. Now, the pictures that we've gone through so far, is that what

9 you were talking about like starting big and you work your way in taking

10 pictures?

11 A Yes.

12 Q Okay. State's exhibit '14'? Now what are we looking at?

13 A Again, this is a closer photograph of Mr. Warrington laying on his left

14 side. It shows him close to the home. It shows the interior door partially

15 opened. It shows broken glass on the concrete. There's an igloo container

16 there. It shows the deceased as I found him on that day.

17 Q Clearly upon the time you arrived there had been no medical

18 intervention, correct?

19 A Yes, that's correct.

20 Q All right. State's exhibit '15'?

21 A That's a closer photograph of Mr. Warrington.

22 Q Okay. Are you able at this point to see any injuries on him, or

23 ascertain where most of this blood was coming from?

1 A I can assume, but, I did not do an up-close examination.
2 Q Okay. State's exhibit '16' here now. What are we looking at?
3 A This is the north side of house. I'm standing in the alley. I'm sorry.
4 This is the west side of the house. I'm standing in the alley. This is a
5 photograph of the Ford Taurus, Taurus or Mercury, I'm not sure which it is,
6 but it was parked in that spot. Mr. Warrington would be on the paved, or, on
7 the concrete pad in front of this vehicle.
8 Q Then this snow here, is this where you're talking about how it was fairly
9 packed down and there were numerous tracks and things of that nature?
10 A Yes. It clearly indicates that there had been some melting in recent
11 days. I'm not sure when it had snowed last. But, obviously by this snow
12 being melted in those different areas I could tell that there had been some
13 snow melting.
14 Q Did it look like to you that things had melted and refrozen, you know,
15 how it gets harder and harder in the wintertime? Is that how it appeared to
16 you?
17 A Yes. It was ten to fifteen degree. It was probably melted and frozen
18 several times.
19 Q Exhibit '17'. What are we looking at here?
20 A I'm standing in the alley within the crime scene. I'm facing in a
21 southerly direction. I'm trying to show possible tracks left in the snow by Mr.
22 Warrington's pick-up truck. It appears, from my guesstimation, that those
23 were left by Mr. Warrington as he pulled in to that spot.

1 Q They seemed to follow him right to where he parked?
2 A Yes.
3 Q State's exhibit '18'. What are we looking at here?
4 A I'm standing in the alley. I'm facing east. That is the south side of the
5 house, or, the back side of the house. That would be Mr. Warrington's Ford
6 pick-up truck parked facing east.
7 Q Okay. State's exhibit '19'. What are we looking at here?
8 A I am standing south of that house. I'm outside of the police tape, the
9 crime scene tape. It depicts the alley, the north/south alley, Mr. Warrington's
10 pick-up truck parked there, and also the proximity to the garage and also the
11 house just west of 436 East McKibben Street.
12 Q Okay. Can you also see, again, in the snow what appeared to be
13 either melting or -- well, it's not fresh and pristine; correct?
14 A That's correct.
15 Q That was State's exhibit '19'. State's exhibit '20'. What are we looking
16 at in this photograph?
17 A As I testified before, you always try to take photographs as you see
18 them and then if you're going to possibly measure anything afterwards then
19 you take it with the tape in it. That was the coordinates with this metal tape
20 that I show, or, that I put down as a reference.
21 Q Okay. So, these perpendicular lines that we see in the picture, that's a
22 tape measure that you have actually placed down now to get some sense of
23 space?

1 A To try to get coordinates; yes.

2 Q Okay. Now, just outside this, down here in this bottom right hand corner here, -- do you see where my pen is?

3 A Yes.

4 Q What are those?

5 A Those were spent shell casings.

6 Q We'll get to those in just a minute. State's exhibit '21'. What are you trying to show here? Let's start here big. Do you see where my pen is?

7 Q What is this?

8 A That's obviously blood from the victim.

9 Q And at this point the victim has actually been removed from the scene; correct, if you know?

10 A I don't believe he had been removed yet.

11 Q Okay. Sorry. Over here are you trying to get some kind of images or prints or anything?

12 A You know, I'd almost have to see the original of that.

13 Q Oh, absolutely.

14 A It's kind of distorted. I can't tell.

15 Q Let me give you a couple here. '21' and '22'. There's also what appears to be some blood splatter closer to the end of the walkway there; correct?

16 A There was blood on this pad at this location. There was something here that caught my eye. I thought it might have been ashes from a cigarette.

1 Q Okay. So, you photographed it just in case that became important?

2 A You photograph a lot of things that turn out to be unimportant.

3 Q Okay.

4 A This also was part of the snow and it also shows the melting and the

5 one footprint in there. But, that's obviously an old one.

6 Q Okay. Is it fair to say that it's something that you -- well, you take

7 photographs of anything that might catch your eye; correct?

8 A Yes.

9 Q Okay. I think you said - I'm sorry, but I was writing something - that a

10 lot of times those things turn out to be nothing; right?

11 A That's correct.

12 Q Okay. So, State's exhibit '21', again, you're referencing the blood. Do

13 you see this little spot here?

14 A Yes.

15 Q Did that also appear to be blood to you?

16 A Yes.

17 Q Okay. Then State's exhibit '22' is a little bit closer-up shot of the blood

18 that I just pointed out? Correct?

19 A Right.

20 Q Okay. Then you said this appeared to -- well, is this what you're

21 talking about, this black dot right here where my pen is?

22 A Yes.

23 Q That it showed perhaps some kind of ash or something?

1 A Yes.

2 Q And what appeared to be an older footprint to you?

3 A Yes.

4 Q All right. Now, State's exhibit '23'. Just a minute. What are we looking at right here?

5 at right here?

6 A This is the victim, Mr. Warrington. This is his Carhartt coat. This would be his right pocket. There appears to be some type of tear in the fabric.

8 fabric.

9 Q Are you talking about almost dead center here in the picture?

10 A Yes.

11 Q Okay. At the time what were you concerned that might be?

12 A I was concerned that this possibly would be either an entrance or exit from a projectile.

13 from a projectile.

14 Q Okay. State's exhibit '24'. What are we looking at here, other than my fingerprint on it? Sorry.

15 fingerprint on it? Sorry.

16 A That's a picture depicting Mr. Warrington's back side. I believe those are his sweatpants and this appears to be some type of tearing in the sweatpants.

18 sweatpants.

19 Q Are you talking about what is like the wider spots we see in there?

20 A Yes. Possibly it's either an entrance or exit wound.

21 Q Now, State's exhibit '25'. What are we looking at here?

22 A That's number one. That would be the photographic tent that was used to depict the two shell casings in that picture.

23 used to depict the two shell casings in that picture.

1 Q Detective Marik, I see you leaning over a little bit. If you want to step
2 down at any point please feel free. Okay? Is this the tent thing you were
3 describing earlier that has the one on it?
4 A Yes.
5 Q Okay. And these were what we saw earlier depicted and what turned
6 out to be two spent shell casings?
7 A Yes.
8 Q When you say a spent shell casing, what do you mean?
9 A The bullet has been fired from the shell casing. The shell casing is
10 usually an object that is ejected from a semi-automatic handgun.
11 Q So, the bullet sits in a casing, right?
12 A Right.
13 Q And the bullet goes out into whatever is being shot at and the casing
14 gets ejected and is trash, so to speak?
15 A Yes.
16 Q Okay. All right. State's exhibit '26'?
17 A This is a closer photograph of the same two items.
18 Q Is that what you were talking about earlier? Again, you try to put it in
19 perspective in a wider shot and then you get closer so you can see more of
20 what the object is?
21 A Yes.
22 Q But, that tent there tells you that we're still referring to the same thing;
23 correct?

1 A Yes.

2 Q State's exhibit '27'. What are you doing in this photograph here?

3 A This is for my coordinates. I'm trying to get an idea of how far it is from the side of the house, how far it is off of the pad. It's a metal tape to measure with.

5 with.

6 Q A common tape measure that many of us would have?

7 A Yes.

8 Q Okay. Now, just for the record, you have the end of the tape measure, where we can actually see the orange body of it, at the very end of the concrete pad; correct?

10 concrete pad; correct?

11 A Yes.

12 Q Okay. And that tape measure goes up to -- well, I see the first one is between the seven and eight inch mark?

13 between the seven and eight inch mark?

14 A Correct.

15 Q And then the second one between the eleven, or, I guess almost starting somewhere in the ten and continuing on to close to a foot?

16 starting somewhere in the ten and continuing on to close to a foot?

17 A Yes.

18 Q Okay. And then this longer tape here would actually go from the house to the end of the pad?

19 to the end of the pad?

20 A Yes.

21 Q Okay. State's exhibit '28'. What are we looking at here?

22 A That's the Igloo.

23 Q Okay.

1 A I'd have to look at the photograph to see. That's a spent bullet.
2 Q Okay.
3 A It's on the concrete pad.
4 Q Okay. When you say a spent bullet, what do you mean by that?
5 A Again, it's the projectile that is fired from a gun.
6 Q Okay. State's exhibit '29'. What are we looking at now?
7 A It would be the same item. It's, again, laying next to the Igloo cooler.
8 It's on the concrete pad. It's depicted by that number two tent. There's,
9 obviously, what appears to be blood and broken glass in the photograph.
10 Q Okay. So, these little shards of like blue type of material appear to be
11 broken glass; correct?
12 A Yes.
13 Q And then the little red spots we see throughout appear to be blood to
14 you?
15 A Yes.
16 Q And this is actually on the other side of the door from where Mr.
17 Warrington's body is; correct?
18 A Right. This is closer to the screen door.
19 Q State's exhibit '30'. What are we looking at here?
20 A I'm going to have to look at the photograph of it.
21 Q That's fine. I'm going to hand you '30' and '31' to kind of give you
22 some perspective there.
23 A Again, that's the projectile, spent bullet.

1 Q This is a different one; correct?

2 A Yes. This is on the concrete pad. This is closer to Mr. Warrington. It's

3 closer to his Carhartt coat.

4 Q It's directly behind his body; correct?

5 A Right. It's depicted with tent number three.

6 Q The other one was on the other side of the cooler, the other side of the

7 door; correct? The cooler, Igloo cooler, or whatever you want to call it.

8 A Yes.

9 Q Okay. Let's put this up there now so the jury can see it. So, '30' is a

10 close-up shot of another spent, well, I think you said bullet.

11 A Yes.

12 Q Okay. And then '31' is what?

13 A That would be the same bullet with the tent number three photograph.

14 It's number three.

15 Q Now, I'm going to show you something here. His jacket appears to be

16 raised; correct?

17 A Yes.

18 Q But, it wasn't raised in the earlier photographs; correct?

19 A I'd have to see the earlier photographs.

20 Q Let me show you actually State's exhibit '32'. This will give you some

21 perspective. State's exhibit '32'. Does his jacket appear raised from his -- as

22 raised from his pants as it did in the last picture?

23 A Yes.

1 Q Just a different --

2 A It was moved probably so we could get that photograph a little better.

3 Q Okay. Gotcha. But, again, that's the same bullet that we're talking

4 about, spent bullet, correct?

5 A Yes.

6 Q Now, State's exhibit '33'. Is this taken a little later in the morning?

7 Does it look a little bit lighter outside?

8 A Yes.

9 Q Okay. And in '33' that's actually after Mr. Warrington's body has been

10 removed, correct?

11 A Yes.

12 Q Okay. What are we looking at in this picture?

13 A This would be the west side of the home. This would be the side door.

14 At this time we had propped it open so we could get an accurate

15 measurement of this interior door. It obviously shows some indentations and

16 what appears to be blood. At this point we had placed a yellow dowel rod

17 through a hole that was in the door.

18 Q So, you actually found and, again, we'll get to that in a little bit, but right

19 here where we see this little yellow, is that what you're talking about a dowel

20 rod?

21 A Yes.

22 Q You found what appeared to be a bullet hole in that?

23 A Yes.

1 Q And, again, this is after it looks like all kinds of things had been
2 removed. The Igloo cooler's not there. The duffel bag is not there. The
3 bullets aren't there.
4 A Right.
5 Q Okay. Now, State's exhibit '34'. Before I go there -- just a second.
6 You said something about his keys were in the door. In State's exhibit '33'
7 are his keys still in the door?
8 A I can only assume. I can't tell from the blown-up photograph.
9 Q Can you tell looking at the closer shot?
10 A I still can't tell if the keys were in there or not.
11 Q Okay. Fair enough.
12 A I knew the keys were in there at one time.
13 Q Okay. We're going to get to that. All right. State's exhibit '34'. What
14 are we looking at there?
15 A This would be the interior door. It would be on the west side of the
16 house. It's a metal door. It has several indentations in it and also what
17 appears to be blood. It also shows a set of keys that are in the lock in the
18 door knob.
19 Q When you arrived on scene were there, in fact, a set of keys in the
20 door knob like that?
21 A Yes.
22 Q Okay. When you say interior door, do you mean inside the storm
23 door? This door clearly leads outside; correct?

1 A Right. There's an interior and an exterior door. That's the one that
2 leads into the house.
3 Q Okay. Well, let's talk about State's exhibit '35'. What are we looking at
4 here?
5 A That's a metal measuring tape that I used to show where the
6 indentations were on various parts of the door.
7 Q Okay. This is actually the door we just saw, correct?
8 A Yes.
9 Q Okay. So, do you see where the red two is?
10 A Right.
11 Q Okay. Are we talking about just on the other side of that two right
12 there? Is that where there appears to be some damage?
13 A There's an indentation there.
14 Q This would be on the lower half of the door, correct?
15 A Yes.
16 Q When we see that two, is that two feet from the ground?
17 A Yes.
18 Q Or, from the concrete pad, I should say. Okay. State's exhibit '36'.
19 We've moved up the door slightly, or are we still looking at the same thing?
20 A It would be the same photograph, I believe.
21 Q Okay.
22 A But, without the tape.
23 Q Okay. Are we talking about the injury to the door, so to speak?

1 A Yes.

2 Q Okay. State's exhibit '37'. Does that appear to be mid-way into the door, about mid-range there?

3 A Yes.

4 Q Okay. Other than the keys in the door, what are you documenting in this photograph?

5 A I believe there was another indentation just to the right of the door knob. There's a little dent there.

6 Q There's a dent to the right of the door knob. Are you talking about right in here?

7 A Yes. And then there was another -- another indentation would be --

8 Q The much larger obvious hole?

9 A The much larger -- yea, that was documented before. But, there was another indentation in the sill, or, well, it was the trim along the door.

10 Q We're going to get to the trim. Let's just focus on the door for right now, okay?

11 A Right. Okay.

12 Q So, you've got apparent damage to the door. I'm looking at State's exhibit '38'. Is this that same shot, just with a tape measure?

13 A Yes. You can see it's two feet ten inches and then the indentation off to the right of the door knob.

14 Q Okay. So, you're actually measuring this, I guess, larger looking amount of damage at two feet ten inches?

1 A Yes.

2 Q Okay. And, in the end, even with something like this, State's exhibit '39' is, well, you take a closer-up version so you could see exactly what that is?

3 A Yes.

4 Q Okay. State's exhibit '40'. Okay. Is this the one you said was just slightly to the right of the door knob? Well, I'm going to keep calling it damage, just for our purposes. What's the number there - three ten? Excuse me. It's two feet ten inches.

5 A It's two feet -- between two feet ten and two feet eleven.

6 Q Okay. That, again, is not quite as obvious, but still damage to the door?

7 A Yes.

8 Q All right. Now, let's take a look at State's exhibit '41' at the door frame itself. What are we taking a picture of here, Detective?

9 A There was -- this is, again, the interior door was open. The exterior door was propped open. Just below the middle hinge, in the wood, there was an indentation and then we found another hole in the refrigerator. That white item where that shovel is, that's the kitchen refrigerator.

10 Q This right here?

11 A Yes.

12 Q Just inside the door is the actual refrigerator?

13 A Yes.

- 1 Q And that's like a snow shovel?
- 2 A Yes.
- 3 Q And a broom propped up against it?
- 4 A Yes.
- 5 Q In this picture, this pane glass here, was that intact or broken out?
- 6 A That was broken.
- 7 Q And is that what you ascertained all the glass on the patio was from - that being broken out?
- 8 A Yes.
- 9 Q I call it a patio. You called it a concrete pad. Okay. State's exhibit '42'. What are we looking at here?
- 10 A It would be a close-up photograph of the indentation in the frame. It comes at about two feet three inches. It appears, again, there's a dent of some type in this. You also see what appears to be blood on this frame.
- 11 Q Even though it looks darker here than in the actual picture, it's red and it looks more like blood; correct?
- 12 A Yes.
- 13 Q State's exhibit '43'. Now, there's no keys in that door at this point; correct?
- 14 A Right.
- 15 Q And it's closed?
- 16 A In the most way, yes, it is closed.
- 17 Q Okay. What are we seeing depicted here?

1 A This was a deformity in the door, possibly by a projectile. I wanted to
2 show that it went through the door. So, that's a yellow dowel rod that I
3 inserted through there.
4 Q Okay. So, that's actually a hole?
5 A Yes.
6 Q And, I mean, it goes all the way through the door?
7 A Yes.
8 Q Okay. Then State's exhibit '44'. Is this that the same hole without the
9 dowel rod?
10 A Yes.
11 Q That's above what looks like a bolt lock?
12 A Yes.
13 Q Let me ask you - I don't know if you'll be able to see it. In State's
14 exhibit '44', will you look at the actual window in that door for me, particularly
15 the bottom of that picture. Does it appear that there's blood splatter on that
16 window?
17 A Yes.
18 Q Did you actually see blood splatter yourself?
19 A Yes.
20 Q Okay. While I'm up here, State's exhibit '45'. What is that?
21 A That is the hole in the door with the metal tape showing about four feet
22 five inches. Again, it's showing blood, or, what appears to be blood.
23 Q There's actually blood on the window, as well as on the door frame?

1 A Yes.

2 Q What did that measure?

3 A Approximately four feet five inches.

4 Q All right. State's exhibit '46'. What are we looking at in this picture?

5 A This was taken from within the kitchen at 436 East McKibben Street.

6 That is the door that we've been discussing. That's the broom. The shovel is

7 still there. That's the refrigerator just inside this door.

8 Q So, basically you're on the inside of the home now taking pictures of

9 the door, versus being on the outside and taking pictures of the door like we

10 were talking about?

11 A Yes.

12 Q Okay. Is this the tape measure up against the refrigerator as well?

13 A Yes.

14 Q State's exhibit '47'. What are we looking at here?

15 A Again, I'm within the kitchen of the house. This is a metal measuring

16 tape, four feet four/four feet five inches. This appears to be a deformity within

17 the metal skin of the door. This would be on the inside of the house.

18 Q Did that appear to correspond with the hole you found on the outside

19 that you put a dowel rod in?

20 A Yes.

21 Q Okay. All right. State's exhibit '48'. What are we actually looking at

22 now?

23 A Again, that's a photograph I took inside the kitchen. It shows the side

1 of the refrigerator. As you can see, the snow shovel is there. I had my
2 metal measuring tape there. It depicts four feet three inches from the floor.
3 Again, it shows a deformity in the refrigerator, which is a hole.
4 Q We're going to match up the hole. Right here in the middle, is that
5 where you're talking about?
6 A Yes.
7 Q Okay. This would be the door frame here to the, I guess, left of the
8 picture?
9 A Yes.
10 Q And then there's that shovel you're talking about and you can see the
11 refrigerator freezer's door, correct?
12 A Right.
13 Q State's exhibit '49'. What are we looking at here?
14 A That's the inside of the refrigerator. That would be, more specifically,
15 the freezer. It's open and clearly seen is a spent bullet.
16 Q Right in front of what looks like to be some package of meat of some
17 sort?
18 A Yes.
19 Q Okay. State's exhibit '50'. What are we looking at there?
20 A That's a closer photograph of the same projectile.
21 Q Where you can actually see more that it's a bullet now?
22 A Yes.
23 Q And State's exhibit '51'?

- 1 A That would be with the plastic photo tent depicting number four.
- 2 Q Okay. State's exhibit '52'. What are we looking at here?
- 3 A It's a photograph taken within the kitchen area of 436 East McKibben Street. That's the refrigerator, with the doors closed, and the stove, and a snow shovel inside.
- 5 Q Okay. Was there also like a counter space over here in the far side of the picture?
- 7 A Yes.
- 8 Q State's exhibit '53'. What are we looking at here?
- 9 A That's within the kitchen area. It's taken towards the door and the refrigerator and it shows the kitchen and items on this desk, if you will, that's within the kitchen area.
- 12 Q Okay. Does that appear to be a phone?
- 14 A Yes.
- 15 Q I know it's a little ancient now with a cord and everything, like a landline.
- 16 A Yes, that's a phone.
- 17 Q Okay. State's exhibit '54'. What are we looking at in this picture?
- 19 A That would be, I believe, an electric bill.
- 20 Q Now, there what appears to have been like the base of the phone; correct?
- 21 A Yes.
- 22 Q And then it looks like a book of some sort?

1 A book and some various papers.

2 Q This white paper, is this what you're referring to as the electric bill?

3 A Yes.

4 Q Now, just a second, but back to State's exhibit '7'. What is that?

5 A It's from American Electric Power. It's an electric bill, I believe, of a

6 hundred and seventy-two dollars. There's printing on it of Mark O. (sic)

7 Carter, 122 East Eureka Street, Lima, Ohio.

8 Q You found that lying on the counter?

9 A Yes.

10 Q All right. Let's go back to where we were. State's exhibit '55'. What

11 are we looking at here now?

12 A I'm standing in the kitchen/living room area. I'm facing north and

13 taking a photograph of that north door and the surrounding area.

14 Q Is that what we would have seen in the very first picture that you took

15 of the front of the house that depicted the address and stuff? Is that that front

16 door basically?

17 A Yes.

18 Q State's exhibit '56'. What are we seeing in this photo?

19 A It's a photograph within 436 East McKibben Street. I'm standing,

20 which would probably be in the kitchen, and I'm facing towards that north

21 facing door. That's more or less the living room area of this home.

22 Q Okay. Let's move to a different series of pictures. State's exhibit '57'.

23 What are we looking at here?

1 A That is the outside floor mat that was on the concrete pad. This would
2 have been the general area where the Igloo ice container and the gym bag,
3 well, they were located there.
4 Q We're going to get to some closer shots, but did you end up recovering
5 evidence off of that mat?
6 A Yes.
7 Q Okay. State's exhibit '58', I've got a feeling that I'm going to have to
8 bring them up to you and then we'll publish them. State's exhibit '58' and '59'
9 real quick. If you'll look at them yourself, then I'll put them up there. Can you
10 tell the jury what you see in those two pictures?
11 A These would be bullet fragments. They were located on this mat.
12 They appear to be copper jacketed and they're depicted with a number five
13 and a tent.
14 Q Okay. So, State's exhibit '58' would be without the tent and '59' with
15 the tent?
16 A Yes.
17 Q Okay. When you say bullet fragments, how do you get a bullet
18 fragment?
19 A Most of the bullets are covered with a copper lining on the outside.
20 Sometimes when they hit objects they tend to break apart. Sometimes the
21 lead breaks apart and sometimes the copper breaks apart. In this particular
22 case it's this part of the actual cartridge, after it's fired, after it's hit something
23 and the bullet has broken apart.

1 Q So, let's take a look at exhibit '58' here. Would this be the part of the
2 mat that would have been, well, not directly up against, but closer to the
3 door?
4 A Closer to the home, yes.
5 Q Okay. Is this what we're looking at in here, what appears to be
6 fragments to you?
7 A Yes.
8 Q State's exhibit '59'. Is this a closer-up of that fragment?
9 A Yes.
10 Q The color is a little different here, but it's actually a copper color?
11 A Yes.
12 Q State's exhibit '60'. I'm actually just going to bring these up to you, too.
13 Sorry. I'm going to show you '60' and '61' and have you take a look at those.
14 What's depicted in '60', the one in your right hand?
15 A This would be the mat that was on the concrete pad. It has broken
16 glass, the Igloo container, the gym bag, and the steel tape that I measured
17 with. What is depicted in it is, again, a cartridge, or, bullet fragment and in the
18 other photograph it would be depicted by photo tent number six.
19 Q Okay. So, exhibit '60' would be your wide shot with the measurements
20 of that mat, correct?
21 A Yes.
22 Q Okay. And then '61' would be a closer-up of the fragment that you
23 then found in that area?

1 A Yes.

2 Q And it's tented as tent number six?

3 A Yes.

4 Q Okay. Now, State's exhibit '62'. What's different in this picture versus the other pictures? What's missing here?

5 A There is the mat indentation, or the outline of it. We had removed the mat at this point to see if anything was underneath it.

6 Q Okay. So, this is your photograph of what was all in that area? It looks like this was the door, well, like the threshold, so to speak?

7 A The threshold. I'm shooting down at a downward angle. This is the actual concrete pad. The rug, if you will, was taken up and you can see the outline of that up close to the house.

8 Q There's basically a discoloration where the rug had been?

9 A Yes.

10 Q The mat that said 'home' on it?

11 A Right.

12 Q Okay. And then State's exhibit '63'. Is this that same area, just closer up of that darker spot?

13 A Yes.

14 Q And, again, we can still see some blood and broken glass in this picture as well?

15 A Right.

16 Q State's exhibit '64'. Is this the threshold area that we just looked at in

1 the other two photographs before things were removed?

2 A Yes.

3 Q Again, does there appear to be glass on the threshold here, the metal threshold?

4 A Glass and what appeared to be blood.

5 Q State's -- well, I'm going to show you '65', '66', and '67'. You can take a look at those and put those in reference for you.

6 A Again, this is the concrete pad. The mat has been removed. It shows the threshold. It shows broken glass and what appears to be blood. It also is of a fragment and it appears to be a lead fragment. This is depicted by picture, well, tent number eight.

7 Q Now, if you'll notice on '67' and '66' here, even though it's tent eight they seem to be in slightly different spots both depicted in '65'; correct?

8 A Right.

9 Q Okay. What are those tents signifying? What do you see those tents marking?

10 A Well, there are multiple fragments in the same general area.

11 Q We're talking about little pieces of bullet, so to speak?

12 A Yes.

13 Q Do these appear to be the copper part or the lead part of the bullet?

14 A This is the lead.

15 Q So, when you talk about that copper, there's actually lead inside that copper?

1 A Right.

2 Q I'll put these up for the jury. '65' is the concrete pad where it meets the
3 threshold, the wide shot; correct?

4 A Yes.

5 Q And then '66' is your tent eight closer to blood with what appeared to
6 be bullet fragments?

7 A Yes.

8 Q And '67' would be slightly further away from the bigger pool of blood
9 with lead fragment?

10 A Yes.

11 Q I think we're good with the pictures now. All right. Now, obviously
12 those pictures weren't chronological. Some were interspersed and that type
13 of thing. When you took those photographs and tented those various objects
14 that we've talked about did you then collect those items?

15 A Yes.

16 Q And when you collect something, such as a casing, bullet, or bullet
17 fragment at a scene do you do anything to make sure that you don't
18 contaminate that evidence?

19 A You wear protective gloves.

20 Q Okay. You would have protective gloves on your hands?

21 A Yes. You try to use -- no, you do use envelopes that have never been
22 used before so that they're in pristine condition.

23 Q Okay. So, you've got envelopes and bags, depending on the size of

1 the evidence; correct?

2 A Yes.

3 Q Okay. It's not like you recycle them; correct?

4 A No.

5 Q Is it fair to say that once a piece of evidence has been inserted into a bag or an envelope no other piece of evidence goes in there; right?

6 A No.

7 Q All right. You obviously collected a number of items?

8 A Yes.

9 Q All right.

10 MRS. KOHLRIESER: Your Honor, for the

11 record, and I'm still going to show them to Mr. Rion, but prior to the

12 commencement of the taking of evidence I did give him a complete exhibit list

13 that describes what each exhibit is and he has had the opportunity to review

14 the same.

15 THE COURT: Is that correct, Mr. Rion?

16 MR. RION: Let me look, but my sense is

17 that that's an accurate statement. It is, your Honor.

18 THE COURT: Okay.

19 Q All right. Let's go through the first batch here.

20 THE COURT: Just a second. Just a

21 second. Issue? You need a break?

22 MRS. KOHLRIESER: That's the sign for a

23

1 break.

2 THE COURT: Well, would a drink of water

3 do it?

4 JUROR: That's fine.

5 THE COURT: How many people want

6 water?

7 MRS. KOHLRIESER: I know it's not the

8 most thrilling part of the trial.

9 THE COURT: But, as far as a break, is

10 everybody -- we'll probably take a break after the direct examination. Anyone

11 else need water? Anyone else? All right. Continue.

12 Q Are we all good, Detective?

13 A We're great.

14 Q Okay. State's exhibit '68'. Can you take a look at that and tell me if

15 you recognize that?

16 A It's a clear plastic envelope and it has a manila envelope inside. It's

17 depicted as a Winchester nine millimeter, which would be number one in the

18 photo on the patio. It's a piece of property that I had collected at the scene.

19 Q Is there writing on the back of it? Your handwriting?

20 A Yes.

21 Q It looks like with an ink pen perhaps?

22 A Right.

23 Q Saying what that is?

1 A Right.

2 Q Okay. Was that something you would have done at the scene to tell
3 you where you found this?

4 A Yes.

5 Q You said that's what's depicted with tent number one in the photos?

6 A Yes.

7 Q Okay. Now, you didn't put it in the plastic bag that we see; did you?

8 A No.

9 Q Okay. You would have put it in the manila envelope?

10 A Yes.

11 Q They've changed computer systems over at the Police Department
12 since you left. Are you aware of that?

13 A I do now.

14 Q There's a couple of tags on that envelope. I just want to make sure
15 we're clear. I'm going to keep referring to '68'. But, it goes to each of these
16 that we have to deal with here in a second. There appears to be a white
17 sticker with red ink on it.

18 A Right.

19 Q Was that the type of property stickers they used when you were in the
20 detective bureau?

21 A Yes.

22 Q But, then there's a white sticker with black printed, well, not
23 handwriting, but computer generated writing stuck over that; correct?

1 A Right.

2 Q And basically that duplicates what was on your other sticker?

3 A Right.

4 Q What are those stickers for?

5 A Well, it's to identify what was inside.

6 Q Okay. Does it also track the evidence?

7 A It tracks it. Now it's bar-coded, so obviously it's done with laser.

8 Q All right. Back in 2009 when you were in the I.D. bureau and handling evidence once you put something in the envelope, well, did you seal the envelope?

10 envelope?

11 A Sealed it and then you tried to put your initials over top of the tape.

12 Q Okay. I see black initials that say D.K.M. Would that have been your initials?

13 initials?

14 A Yes.

15 Q Okay. Does that tell you that you're the one that put this in evidence?

16 A Yes.

17 Q Okay. Now, there's -- and we'll get into that with other witnesses. But, there's a bunch of other handwriting all over this envelope; isn't there?

18 there's a bunch of other handwriting all over this envelope; isn't there?

19 A Yes.

20 Q That's not yours?

21 A Right.

22 Q Okay. The plastic envelope has other initials that aren't yours, too; correct?

23 correct?

- 1 A That's correct.
- 2 Q Okay. So, '68' you said was a bullet that you collected at 436 East McKibben?
- 3 A Yes.
- 4 Q Okay, '69'. Again, the same type of packaging we've talked about extensively with exhibit '68'?
- 5 A Yes.
- 6 Q Same type of new computers, plastic bags not yours, and that type of thing?
- 7 A Yes.
- 8 Q The manila envelope, however, that's inside here, is that what you would have put --
- 9 A Yes, that's mine.
- 10 Q Okay. What is this piece of evidence?
- 11 A That is the Winchester nine millimeter, which is number one in the photo on the patio, that was collected on the 23rd of February.
- 12 Q Okay. Now, if you look at -- let's look at '68' and '69' just a second. You know, I can see through here. We'll cut them open if we need to. Can you see a number written on the back of that envelope? Do you see the number symbol?
- 13 A Number.
- 14 Q Okay. Can you tell what's written after that?
- 15 A It looks like number one.

1 Q Is there a letter?

2 A It looks like number one, maybe A.

3 Q Okay. Now look at exhibit -- well, excuse me. That was '69'. Look at

4 '68'. Can you see similar markings on that one?

5 A One B.

6 Q Okay. So, does that tell you that we're talking about two different

7 objects here with tent one?

8 A Yes.

9 Q All right. State's exhibit '70-A'. What is that?

10 A It's a manila envelope inside of a plastic container. It's number three in

11 the photo by the body on the patio at 436 East McKibben Street. My initials.

12 It is a spent cartridge - I'm sorry - spent bullet.

13 Q Okay. That's one that I want to go back and ask you just a second. I

14 apologize. I don't have my notes up here with me. '68' and '69' you identified

15 as Winchester nine millimeter. Are these bullets?

16 A Shell casings.

17 Q Okay. Both of these are shell casings?

18 A Yes.

19 Q Okay. So, those would have been the two shell casings that we saw --

20 Together on the patio.

21 Q Okay. I guess west of the victim's feet?

22 A Yes.

23 Q Okay. So, '68' and '69' are the actual casings. Okay. '70-A' is a

1 bullet; correct? A spent bullet?

2 A Yes.

3 Q And is that the one that was found behind Mr. Warrington's body, right there by his jacket?

4 A It was by his body; yes.

5 Q All right. '70-B'?

6 A A manila envelope within a plastic container. It would have my initials on it and dated on the 23rd. It's a spent bullet located by the Igloo cooler.

7 Q Okay.

8 A It's number two in the photo.

9 Q All right. So, this would be what we saw on the other side of that door and the Igloo is propping it up and you can see it on the other side?

10 A Yes.

11 Q Okay. Then, lastly, State's exhibit '71'.

12 A A manila envelope inside a plastic container. This is number four --

13 Q Detective? Do you mean -- say that again.

14 A A manila envelope within a plastic --

15 Q Within a plastic. Okay. I heard you wrong. I'm sorry. Go ahead. It's been a long day.

16 A It's number four in the photograph on the tent. This is a spent bullet taken from the freezer at 436 East McKibben Street on the 23rd of February.

17 Q Okay. Now, just for the record so everything is clear, '68', '69', '70-A', '70-B', and '71' are all in plastic envelopes; correct?

1 A Yes.

2 Q Okay. Within each one of them there is a manila envelope containing
3 the actual evidence?

4 A Yes.

5 Q Okay. And you bagged the actual manila envelope and sealed that;
6 correct?

7 A Yes.

8 Q And put your identifying information on it; correct?

9 A Yes.

10 Q Okay. All right. I'm going to do this in a group. I'm going to hand you
11 State's exhibits '72', '73', '74', '75', and '76' and ask you to take a look at each
12 one of those. Tell me when you're done.

13 (WHEREUPON, witness reviewed exhibits.)

14 A These are the manila envelopes, not in plastic. They're tagged by me,
15 collected by me, identified by me, and sealed by me. 436 East McKibben
16 would be on all of them, which are the items collected.

17 Q And does each one of them also contain a marking somewhere on
18 there that indicates what tent they're associated with in those photographs?

19 A This is a fragment. This would be five A.

20 THE COURT: Which exhibit number?

21 MRS. KOHLRIESER: '72'.

22 THE COURT: Okay.

23 Q State's exhibit '73'?

1 Fragment, five B

2 Q So, when you say five A and five B, you mean these are the two

3 fragments that were marked by tent number five?

4 A Yes.

5 Q Okay. Go ahead. State's exhibit '74?

6 A Would be another fragment, tent number six.

7 Q Okay. And State's exhibit '75?

8 A Another fragment, eight A.

9 Q Okay. And State's exhibit '76?

10 A Eight B, fragment.

11 Q Are those those two fragments that you found kind of near the mat and

12 threshold?

13 A On the patio mat.

14 Q Yes. All right. Again, these were all collected by you and they don't

15 appear to have been reopened; do they?

16 A No.

17 Q Now, all these exhibits that we've just talked about, '68' through '76',

18 those are all depicted in photographs that we went over; correct?

19 A Yes.

20 Q Now, once you've gone through the scene and taken your

21 measurements, and you've taken your photographs, and you've collected

22 actual physical items and you believe that you've gotten everything you can

23 out of this, what do you do with the evidence?

1 A It's placed in my vehicle. The vehicle is locked up. Then I take this
2 evidence to the Police Department. It will either be locked into a locked closet
3 where there's only two people that have keys and then, depending on if I
4 have time, then it is documented in the proper way within the computer
5 system and then placed into the actual evidence room of the Police
6 Department.
7 Q What do you mean if you have time it's put into the computer system?
8 A Sometimes at a crime scene you don't have much time. There's other
9 things to do. You want to secure the property so you know where it is and so
10 it's secure and we can come back to it and nobody's tampering with it. You
11 might have to go out into the field and do something else and then come back
12 and sit down at the desk and do the typing and do the actual processing and
13 documentation, et cetera.
14 Q Would you have changed your gloves when you were out there at the
15 scene collecting these various items? Would you have repeatedly changed
16 your gloves to avoid cross contamination?
17 A If it was necessary, yes.
18 Q Okay. And you said the main thing is get that evidence secured? So,
19 get it into that locked room, or, closet, depending upon where you're going to
20 store it, correct?
21 A Yes.
22 Q And then you may go back actually and do your typing at a later date?
23 A Yes.

1 Q Now, you said only two people have keys to those storage locations.
2 Who would those two people have been on February 23rd, 2009?
3 A Myself and the other identification officer, Ken Whitney.
4 Q And, in fact, Officer Whitney came out at some point to 436 East
5 McKibben to assist you, correct?
6 A Yes.
7 THE COURT: Just a second.
8 JUROR NUMBER THREE: Can I be excused for a few minutes?
9 THE COURT: Yea. Let's take a break.
10 We'll stand in recess for fifteen minutes or so. Remember the admonitions.
11 Don't discuss the matter with anybody - among yourselves or with others.
12 Don't formulate or express any opinions. Have no contact with the
13 participants or the media. We'll stand in recess.
14 (WHEREUPON, COURT WAS IN RECESS.)
15
16 THE COURT: Okay. We're reconvening
17 in Case Number CR2014 0139, State of Ohio -vs- Markelus Q. Carter. The
18 defendant is present in Court with counsel. The State is present. The jurors
19 have returned from the recess.
20 The recess, the record will show, was necessitated by a juror who
21 wasn't feeling well. I'm not trying to put too much of a spotlight, but that was
22 Mrs. Krites. Right?
23 JUROR NUMBER THREE: Yes.

1 THE COURT: I understand you're not
2 feeling real good.
3 JUROR NUMBER THREE: I feel a lot better, but queasy yet.
4 THE COURT: Okay. I understand, too,
5 that you've experienced this feeling before and it has passed in the future, or,
6 in the past and so you think this will be all right?
7 JUROR NUMBER THREE: Yes. Yes.
8 THE COURT: You'll be all right?
9 JUROR NUMBER THREE: Yea, in a couple of hours I'll be okay.
10 THE COURT: It's not something that lasts
11 days and days and days?
12 JUROR NUMBER THREE: Oh, no. No, no. Thank goodness.
13 THE COURT: Okay. We're at about
14 three-thirty in the afternoon. I've discussed it with counsel. We'll go ahead
15 and take an early recess today for the evening. Detective Mark is still on the
16 stand and still in the direct examination. We'll take an early recess. This will
17 all even out in the end, perhaps, because we stayed late one day and we go
18 early one day. So, there might be some other late days in the future. We're
19 trying to get through the case, but I also need to give everybody, the parties,
20 plenty of time to ask the questions they need to ask. So, again, I appreciate
21 your patience, ladies and gentlemen of the jury. We'll recess until eight
22 forty-five in the morning.
23 Now, if any juror, and I'm not just talking about Mrs. Krites, but if any

1 juror feels ill at any time, let us know. But, certainly in the morning, Mrs.
2 Krites or anyone, if you feel like you can't continue because of health call and
3 let us know.
4 But, remember the admonitions. Don't discuss the case among
5 yourselves or with anyone else. Don't reach any conclusions or express any
6 opinions. Don't pay attention to any media accounts of the case. Don't do
7 any independent investigations. No communications over the Internet or
8 Facebook. If you ever feel like someone has violated any of these rules in
9 your presence it's okay to be a tattle-tale in this situation and let Monica know
10 that someone said something out in the hallway, or said something to you, or
11 tried to make contact with you, or other jurors talked. I'm not trying to set you
12 guys up to be tattle-tales on each other, but it's important that everybody be
13 open and completely honest about all of this stuff so we don't have a problem
14 later on.
15 So, we'll start up at eight forty-five in the morning. We'll continue with
16 Detective Marik. Everybody get a good night's sleep. Mrs. Krites, especially
17 you.
18 JUROR NUMBER THREE: I promise.
19 THE COURT: You're good for getting
20 home?
21 JUROR NUMBER THREE: Oh, yes.
22 THE COURT: Okay. Again, anybody, let
23 us know if there's a problem at any time, but especially tomorrow morning

1 when we continue with this.

2 Anything from counsel before we break for the day?

3 MR. RION: No, your Honor.

4 MR. MILLER: No, your Honor.

5 THE COURT: Okay. Get some rest. Was

6 it too hot in here? It got warmer this afternoon; didn't it? I don't know --

7 MRS. KOHLRIESER: I brought a fan in,

8 your Honor.

9 THE COURT: I know the temperature

10 outside got cooler. I don't know if the computer that runs the heating thought

11 it should get warmer in here. I started getting warm, too. I'll try to see if I

12 can't get maintenance to make it cooler in here. Again, dress in layers and if

13 it gets too warm you can take a sweater off. Or, bring a sweater and if it gets

14 too cold you can put the sweater on. So, we'll work on that.

15 So, we'll break for the day and we'll see everybody at eight forty-five.

16 (WHEREUPON, COURT RECESSED FOR THE DAY AT 3:55 P.M.)

FRIDAY, SEPTEMBER 11, 2015

8:52 A.M.

THE COURT: All right. Today is September 11th, 2015. We're reconvening in Case Number CR2014 0139, State of Ohio -vs- Markelus Q. Carter. The record will reflect the defendant is present in Court with his attorney. The State is present. We've brought one juror in, number seven on the list, Miss Brown. The reason I brought you in here individually, Miss Brown, is I understand you had contacted the bailiff after we had recessed yesterday afternoon. You did exactly what you're supposed to do by doing that. I just wanted to put it on the record. We have to make a record of all these things just so everything is clear. If you could just kind of share with us what you shared with Monica when you called and then I might have some questions. JUROR NUMBER SEVEN: Okay. As I was leaving last night at the final recess I was walking to my car, which was parked between the attorney office across the street and the Fat Cat Diner, about three-quarters of the way down, but I was just walking off of the sidewalk into the parking lot and I was approached by two men. One of them says to me, and I quote, "Is you a juror," in a very kind of angry tone. I was a little frightened and I put my head down and walked as fast as I could to my car and left. As I returned home I got the phone number for the Courthouse and called Monica. THE COURT: Did you recognize these

1 people as having seen them in the Courtroom or around the Courthouse any
2 time earlier?
3 JUROR NUMBER SEVEN: Not at all. Not at all.
4 THE COURT: Okay. That kind of thing
5 shouldn't happen. I need to basically know if you feel that experience now is
6 going to prohibit you from fairly and impartially sitting as a juror in this case
7 and being fair on both sides. Do you feel that that's going to interfere --
8 JUROR NUMBER SEVEN: No.
9 THE COURT: -- at all with you? So, it's
10 not going to have any impact? You can set that aside? Here's what I'll do is,
11 well, just for general peace of mind and safety I'll just have a deputy out when
12 the jurors are excused. But, certainly if anything like that happens again you'll
13 let us know?
14 JUROR NUMBER SEVEN: Absolutely.
15 THE COURT: Okay. Anything else
16 happen that you feel is going to impact your ability to be fair and impartial?
17 JUROR NUMBER SEVEN: No, sir.
18 THE COURT: And you had no idea who
19 these persons were? There were two, but only one spoke?
20 JUROR NUMBER SEVEN: Only one spoke.
21 THE COURT: Okay. Does the State have
22 any questions for the record?
23 MRS. KOHLRIESER: No, your Honor.

1 THE COURT: Does the defense have any
2 questions for the record?
3 MR. RION: Just one question. Do you
4 attribute those people to being with either side of the case?
5 JUROR NUMBER SEVEN: No. I would have no idea.
6 MR. RION: All right. Thank you.
7 THE COURT: All right. Well, thank you
8 very much. Any other concerns?
9 JUROR NUMBER SEVEN: No, that's it.
10 THE COURT: Okay. Well, you can join
11 your fellow -- well, actually you can stay and go in your seat and we'll bring
12 the others in.
13 MRS. KOHLRIESER: Actually, your
14 Honor, can we address something before we bring everyone in?
15 THE COURT: All right. All right. Go back
16 and join your jurors and we'll have you in in a minute, okay?
17 (WHEREUPON, juror was excused from the Courtroom.)
18 THE COURT: Okay. Miss Brown has left
19 the room. I will get with the Sheriff's Department as soon as I can this
20 morning and we'll just have a person, a Sheriff's Deputy, out there when the
21 jurors are excused for the day. Assuming they're all in that parking lot, and I
22 don't know if they're all in that parking lot, but we'll have someone out there
23 and try to prevent anything like that happening.

1 Mrs. Kohlrieser, did you have something you wanted to put on the
2 record?
3 MRS. KOHLRIESER: Yes, your Honor.
4 It's just something Detective Clark brought to my attention. I had noticed it
5 myself a little bit, but was running around and doing things afterwards.
6 Detective Clark had raised that a number of individuals who sat in the Court,
7 as well as people who weren't in Court but came up to these individuals and
8 were socializing and things of that nature, well, literally right on the
9 Courthouse steps in front as, you know, jurors were going out and, in fact, it
10 was for so long that Detective Clark actually escorted one of our witnesses
11 out who didn't feel comfortable because it was members of the defendant's
12 family and, granted, I don't know who everyone is, but sitting on the
13 defendant's side, not that that is dispositive of the issue, but just in general
14 the sense of uncomfortability. Witnesses coming here shouldn't have to run a
15 gauntlet, nor should jurors have to run a gauntlet. I don't know who
16 approached her, and I don't know -- well, I can safely say that no one from the
17 prosecution or the Police Department did that, and I doubt highly from the
18 Warrington family that happened, but in any regard, well, I guess I would just
19 ask that once there are people in the gallery and that type of thing, well, if the
20 Court could just instruct them to make sure that there's no contact with the
21 jurors and they give them ample space to get by. They shouldn't be having to
22 overhear any conversation or anything like that. When everybody is trailing
23 down them steps together, you know, because jurors aren't sequestered yet

1 and they're not deliberating yet and there's no one going down there with
 2 them, well, you know how narrow that staircase is, and I just don't trust
 3 people not to talk about things and jurors to overhear. So, I guess I'm asking
 4 the Court to admonish the gallery to just, you know, give jurors distance or
 5 otherwise make accommodations for the jurors to go down the back steps or
 6 something.

7 THE COURT: Yea, I can make those
 8 kinds of accommodations for the jurors to use another exit. I mean, it's a free
 9 world. Anybody can stand on the front steps of the Courthouse and talk. The
 10 jurors have been instructed to disregard anything like that. Unless I know of a
 11 specific incident, or, where we can identify a specific person, well, I'm not
 12 going to make that general admonishment. The jurors are admonished and
 13 I'm going to trust the jurors will follow the instructions. So, I understand the
 14 concern. We'll keep our eyes posted. I'll have my security staff keep their
 15 eyes open and ears open. If there seems to be some type of intentional,
 16 deliberate contact by anybody with any of the jurors, if we can identify a
 17 specific incident, we'll deal with that accordingly. It could possibly arise to a
 18 possible criminal matter. But, I'm not suggesting that at this point. People
 19 are allowed to be on the sidewalk and be in front of the Courthouse. What I'll
 20 do is probably have the jurors maybe go through a different door. I've talked
 21 to the bailiff about that already. We may make some other accommodations
 22 for a couple of the jurors who I know are smokers. We might find a different
 23 location where they can go smoke instead of the front steps to try to avoid

1 all of that.

2 MRS. KOHLRIESER: I guess it was just

3 concerning because it was forty-five minutes before Detective Clark could

4 escort the witness out. I mean, they just gave up waiting. We're talking about

5 forty-five minutes they were loitering on the sidewalk at that point and then it's

6 like intentions are clear.

7 THE COURT: Okay. I note it for the

8 record. Anything else?

9 MRS. KOHLRIESER: No, your Honor.

10 THE COURT: Anything? Okay. Let's

11 bring the jurors in. Is Detective Marik still here?

12 MRS. KOHLRIESER: He is here.

13 (WHEREUPON, jury and witness were brought into the Courtroom.)

14 THE COURT: All right. We're reconvening

15 with all the jurors present in CR2014 0139 this 9-11-2015. It's State of Ohio

16 -vs- Markelus Q. Carter. The defendant is present with counsel. The State is

17 present.

18 Ladies and gentlemen of the jury, welcome back. We've got a full day

19 in store. We'll try to make sure we try to get a reasonable end of the day time

20 because of the weekend starting. I'll have some instructions for you,

21 obviously, at the end of the day when we start the weekend.

22 I just want to ask - is there anyone on the jury who feels like they were

23 present or have been unable to follow my admonitions not to discuss the

1 case? Does anybody feel they've been exposed to anyone else who had

2 information about this case that would prevent you from being fair and

3 impartial? Anybody? Any situations? Okay.

4 All right. We'll continue. When we left off -- oh, by the way, Mrs.

5 Kries, are you feeling better?

6 JUROR NUMBER THREE: Much. Thank you.

7 THE COURT: Okay. All right. Detective

8 Marik was on the stand. The State was, I think, close to ending their direct.

9 MRS. KOHLRIESER: Yes, your Honor. I

10 will represent to the Court that I have a few more questions.

11 THE COURT: Okay. All right.

12 MRS. KOHLRIESER: But, also, in

13 preparing for today I actually left two of my exhibits over at the office and so

14 Mr. Miller is actually running back to get those.

15 THE COURT: Okay. All right.

16 MRS. KOHLRIESER: They're for

17 Detective Marik.

18 THE COURT: Okay. All right. Well,

19 Detective, you can take the stand again. You're still under oath from

20 yesterday. Mrs. Kohlrieser, you can continue. Can you go forward and

21 inquire without those exhibits?

22 MRS. KOHLRIESER: Yes.

23 THE COURT: Okay.

1 MRS. KOHLRIESER: In case there was a
2 little bit of a stutter, I wanted everybody to know why. It's my fault.
3 **DIRECT EXAMINATION OF DET. DONALD MARIK CONTINUED**
4 **BY MRS. KOHLRIESER:**
5 Q All right. Detective Marik, I apologize. I don't quite recall exactly
6 where we left off. So, it might not flow a little bit. We talked about collection
7 of various pieces of physical evidence at the scene at 436 East McKibben, if
8 you recall, correct?
9 A Yes.
10 Q Okay. One thing I did not have you identify previously, and I'll do that
11 right now, is State's exhibit '77'. I'd ask you to take a look at that and tell me
12 if you recognize what that is.
13 A It's a brown bag. It's sealed. It has my signature and a property tag.
14 It's an American Electric Power bill. It's dated February 23rd, 2009.
15 Q Okay. Would that be the power bill that we saw depicted in the
16 photograph earlier on the counter --
17 A Yes.
18 Q -- at 436 East McKibben?
19 A Yes.
20 Q Now, again, forgive me if I repeat. Once you collected all those things
21 and I believe you described the evidence storage system and things of that
22 nature, all this stuff when it goes into storage remains in the bags that it's
23 collected in, correct, the envelopes?

1 A Yes.

2 Q And they're kept in their own space, for lack of a better term, for each particular case?

3 A Yes.

4 Q Now, the following day did you attend the autopsy of Ken Warrington?

5 A I did.

6 Q And is that standard procedure for someone, particularly an I.D. Officer, to attend the autopsy on a suspicious type of death?

7 A To photograph it and also to collect any evidence given to me by the pathologist; yes.

8 Q Okay. So, you actually take photographs during the autopsy?

9 A Yes.

10 Q Does the coroner, or her assistant, also take photographs?

11 A Yes.

12 Q And you said to collect evidence. Such as?

13 A Anything in the autopsy related to the death, such as projectiles. We also take a blood sample and anything pertinent to the case. We also collect the clothing that the deceased was wearing.

14 Q Okay. So, if the deceased comes in with clothes on, -- well, I assume Mr. Warrington came in that way?

15 A Yes.

16 Q The coroner actually removes those and gives them to you for evidence collection?

1 A Yes.

2 Q And are they treated the same way you treat the evidence at the actual scene? Separately bagged and that type of thing?

3

4 A Yes.

5 Q So, in this case did you collect Mr. Warrington's clothes?

6 A Yes.

7 Q You said also particularly in a shooting death sometimes there's actually bullets and fragments left in the body?

8

9 A Yes.

10 Q And the coroner will remove those?

11 A Yes.

12 Q And then you get them?

13 A Yes.

14 Q Again, do you place them in evidence just like you do every other item?

15

16 A Yes.

17 Q And in this case were more bullets or fragments found during the autopsy?

18

19 A I do not believe any were found.

20 Q You had found the two shell casings there, and I believe three bullets,

21 you said. Did it appear that Kenneth Warrington was shot more than once?

22 A Yes.

23 Q More than twice?

1 A Yes.

2 Q Do you, off the top of your head, remember how many times it was?

3 A There were a number of entrance and exit wounds.

4 Q Okay. So, after you attend the autopsy and you're informed of the number of wounds and that type of thing, but no other bullets or fragments were recovered from Mr. Warrington's body, what do you do?

7 A I return to the Police Department from that point. Or, if I had to drop off anything to Bowling Green at the Bureau of Criminal Investigation, from Toledo to Bowling Green and then back to Lima.

10 Q That was part of your job as an I.D. Officer as well, correct?

11 A Yes.

12 Q To take evidence from the evidence room to whatever state crime lab?

13 A Yes.

14 Q And I guess for those of us who, you know, watch T.V. and see C.S.I. and things like that, your job as the I.D. Officer is the collection of evidence, correct?

17 A Yes.

18 Q You don't check for DNA trace and that type of stuff, correct?

19 A No.

20 Q Okay. We have a state crime lab that does that?

21 A Yes.

22 Q Now, in this particular case once you returned back to station did you ever go back out to 436 East McKibben that day?

1 A Yes.

2 Q Okay. What was the purpose?

3 A The purpose was to look for fragments, shell casings, and spent bullets that may have been missed.

4 Q Okay. And when you went back out there -- now, by this time, though, the scene was released; correct?

5 A Yes.

6 Q Okay. So, the crime scene tape is down and whoever is free to come and go?

7 A Yes.

8 Q Okay. So, when you went back out there were you able to find anything additional?

9 A We looked and, no, we did not find anything.

10 Q Did you take any additional measures for assistance in locating anything?

11 A I thought that possibly if we melted some of the snow that we might find something and at that time I had summoned the fire department and they sent a pumper from the north end. They sent a pumper and a couple of firefighters and they gently used the water from the hose and melted down a section of the alley with the water in order for us to see if we missed any bullets or if we missed any shell casings. The snow was covering everything and we thought, 'well, let's give it a try and see what we can do'.

12 Q Okay. Like something might have fallen into the snow, or, gotten

- 1 obscured by it or something?
- 2 A Yes.
- 3 Q Stepped on even?
- 4 A Yes.
- 5 Q Okay. And you didn't, in your search at the time, didn't find anything?
- 6 A We scoured the gravel and could not find anything.
- 7 Q That was going to be my next question to you. That alleyway there, that parking area, that's not concrete or asphalt or anything; is it?
- 8 A It's loose gravel.
- 9 Q Loose gravel? Okay. Now, Detective Marik, did you ever go through the cooler and duffel bag that were found there next to Mr. Warrington's body?
- 12 A Yes.
- 13 Q Okay. What types of things did you find inside?
- 14 A The gym bag had a number of clothing items. I remember there were some towels, wet towels. It just related to changing clothes perhaps.
- 16 Q Okay. Like maybe there was a shower at work or something where he could have changed or something?
- 18 A Yes.
- 19 Q Okay.
- 20 A The cooler essentially had some papers in it, some food items, things related to probably what he had at work, I assuming.
- 22 Q Okay. Did you also find the victim's wallet?
- 23

1 A Yes.

2 Q Was there any money in any of these items?

3 A Yes.

4 Q Do you remember off the top of your head approximately how much money?

5 A I thought it was one hundred sixty-six dollars in U.S. currency.

6 Q Okay. And all that money was still there; correct?

7 A Yes.

8 MRS. KOHLRIESER: If the Court would

9 give me just a moment? I'm sorry.

10 THE COURT: Okay.

11 (WHEREUPON, Court went off the record briefly.)

12 Q Detective Marik, I'm going to hand you what's now marked as State's exhibit, excuse me, State's exhibit '159' and ask you if you recognize that.

13 A That would be the contents of the cooler. This photograph was taken with the amount of items displayed on the floor so that we could get an idea of everything that was in there, including the wallet, the money, credit cards, a book, and several other items, food items, perhaps.

14 Q Okay. And did you also look inside some of those items to see what was inside there?

15 A Yes.

16 Q All right. This is State's exhibit '159' which we previously referred to?

17 A Yes.

- 1 Q Okay. And is this what you were talking about it looked like some
2 lunch items, perhaps, and these look like smaller bills here; correct?
3 A Yes.
4 Q And did you look inside also a tin that was found inside these?
5 A Yes, we looked inside all of the items.
6 Q State's exhibit '160'. Take a look at that for me. Do you recognize
7 that?
8 A Yes. It's a color photograph of the tin. It was displayed on the floor
9 and there were a number of items inside this tin. It looks like maybe a pen,
10 an aspirin bottle, business card, a watch, maybe a pen, a prescription bottle.
11 It looks like maybe a pen knife. I'm not sure.
12 Q Okay. Again, this is so the jury can see '160'. Is this what you were
13 talking about, the tin and the various contents?
14 A Yes.
15 Q Just run of the mill stuff that someone might carry around with them?
16 A Yes.
17 Q And then did you also find the victim's identification and work badge?
18 A Yes, I did.
19 Q I'm showing you State's exhibit '162'. Do you recognize that?
20 A It's a color photograph of a ten dollar bill, a five dollar bill, a one dollar
21 bill, driver's license, Lima Refinery Husky identification tag with Ken
22 Warrington, and his wallet and a couple of other plastic cards.
23 Q Okay. Before I put that up, would you look at State's exhibit '161'. Do

1 you recognize that?

2 A It's a color photograph of three fifty dollar bills and two charge cards,
3 or, debit cards.

4 Q So the jury can see what we're talking about, exhibit '161'. Are these
5 the larger denomination bills, the fifty dollar bills, that you were just looking
6 at?

7 A Yes.

8 Q Okay. And are these the credit cards of Ken Warrington's?

9 A Yes.

10 Q And exhibit '162', does that show the driver's license and Husky
11 Refinery badge?

12 A Yes.

13 Q And then the ten, five, and one you were just talking about?

14 A Yes.

15 Q Now, State's exhibits '159', '160', '161', and '162', do they fairly and
16 accurately represent the contents of the cooler and the wallet as you found
17 them on February 23rd, 2009?

18 A It does.

19 Q I guess you displayed everything. But, this is what was in there;
20 correct?

21 A Yes.

22 Q With the exception of perhaps transporting some of the evidence that
23 was collected for various testing and things of that nature and general

1 maintenance of the property room, did you have any other involvements with
2 this case in investigating it?

3 A I was at 122 East Eureka Street that night.

4 Q Okay.

5 A I did very little there outside of placing bagged property within the

6 property van and then transporting it to the Police Department and locking

7 that up into a closet.

8 Q Okay. And in doing that did you wear any gloves or anything that you

9 had worn at the crime scene?

10 A No. I never handled the property there.

11 Q Okay. So, you -- well, was there any chance you cross-contaminated

12 things from 436 East McKibben to 122 East Eureka?

13 A No.

14 MRS. KOHLRIESER: Nothing further.

15 THE COURT: Okay. Mr. Rion, you may

16 inquire.

17 MR. RION: Thank you, your Honor.

18 **CROSS EXAMINATION**

19 **BY MR. RION:**

20 Q Good morning, sir.

21 A Morning.

22 Q You were in charge of the crime scene for the address on McKibben,

23 but not for over on Eureka, correct?

1 A Correct.

2 Q And who was in charge over there from a property point of view?

3 A The only thing I did was handle the property. I handled the bagged property and took it to the Police Department only.

4 Q Was Whitney in charge of that scene?

5 A I believe he was.

6 Q Okay. So, let's talk about McKibben for a second. We've seen pictures of the outside. We've seen pictures of the living room area. Did you go into the attic?

7 A At 436 East McKibben?

8 Q Yes.

9 A No, I did not.

10 Q You did not. Did you take any pictures of any of the bedrooms?

11 A No.

12 Q Did you search the bedrooms?

13 A I would have gone into the bedrooms, I believe, but not searched them.

14 Q Did you document what clothing was where and of whose, or, any of the clothing in any of the rooms?

15 A No.

16 Q Do you have any recollection of the clothing in any of the rooms?

17 A No.

18 Q Did you search the drawers looking for any type of weapons in the bedrooms?

19 23

1 A No.

2 Q I'm going to hand you what's been marked as defense exhibits 'C', 'D', 'E', 'F', and 'G'.

3

4 THE COURT: Now, is this the same 'C' that was previously identified?

5

6 MR. RION: Oh, I already had a 'C'?

7 THE COURT: Yea, you had a 'C'.

8 previously. That was the computer photo that you said you were going to get printed.

9

10 MR. RION: Yes. So, 'C' would be the --

11 THE COURT: 'C' was the one that was displayed on the computer before.

12

13 MR. RION: Shown on the computer? That is that.

14

15 THE COURT: Okay. All right.

16 Q First, I'm handing you defense exhibits 'C', 'D', 'E' and 'F'. Do those appear to be pictures that you took the morning of February 23rd, 2009?

17

18 A They are.

19 Q And you created digital images, correct?

20

21 A I did.

22 Q And so these are print-outs from the digital images?

23

24 A Yes.

25 Q And do they appear to be fair and accurate pictures of what you saw

1 that day?
2 A Yes.
3 MRS. KOHLRIESER: Your Honor, the
4 State would stipulate that those are pictures that Detective Marik took on that
5 day.
6 THE COURT: Okay. Thank you.
7 Q I'm showing you defense exhibit 'C'. Does that appear to be -- first of
8 all, do you see the tire tracks here that come and sort of line up with the
9 truck?
10 A Yes.
11 Q Those appear to be fresh prints; correct?
12 A Yes.
13 Q So, if we're looking right here, as an example, you can see a print that
14 goes in and it looks different than the rest of the snow; right?
15 A Yes.
16 Q And there were no other fresh tire prints as fresh as those, or, that
17 were competing with those prints; correct?
18 A Yes.
19 Q That would lead you to believe that nobody else drove across those
20 prints after Mr. Warrington drove in; is that a fair conclusion?
21 A Well, they didn't drive across the middle. You can tell that. Also, on
22 both sides of the two tracks there. So, --
23 Q In other words, these prints here that we can see right there, it doesn't

1 appear that prints from tires of trucks or cars or anything appeared over those
2 prints after that would have packed in the snow; correct?
3 A Well, certainly not in the middle or the sides; no.
4 Q Okay. All right. I want to draw your attention to the shed here. Have
5 you had a chance to go out recently to the scene at all?
6 A No.
7 Q Do you see any motion light on the shed?
8 A Not in that particular photograph; no.
9 Q Just so it's clear, this is the house there at 436 McKibben; correct?
10 A That would be the south side of the house.
11 Q The south side of the house? That's the shed next to it. That's 'C'.
12 I'm showing you defense exhibit 'D'. Would this be another view of the south
13 side of the house and the shed as well?
14 A Yes.
15 Q And, again, up here you do not see any motion detector; correct, a light
16 with a motion detector?
17 A I don't see a light there. No, I don't.
18 Q That was 'D'. I'm showing you defense exhibit 'F'. Looking both at the
19 south side of the house and the south side of the shed. No motion detectors
20 and lights on that side; correct?
21 A There does not appear to be.
22 Q Finally, defendant's exhibit 'E'. Now, this would show -- well, it's a
23 pretty good view of both, -- again, that's the south side of the house; correct?

1 A Yes.

2 Q And this would be, I guess, the north side of that shed; correct?

3 A Yes.

4 Q On this roof here do you see any light, any motion detecting light?

5 A No.

6 Q And this is exactly the way it was on February 23rd, 2009; correct?

7 A Yes.

8 Q And that's the day that picture was taken?

9 A Yes.

10 Q And in this picture you can see -- well, is this a window right here?

11 A I believe it is.

12 Q And is that a window into a bedroom; do you recall?

13 A I think the bedrooms were on the south side.

14 Q Now, you took some pictures and I want to draw your attention to

15 State's exhibits '21' and '22'. Do you recall these two exhibits?

16 MR. RION: Your Honor, is it okay if I

17 approach the witness?

18 THE COURT: Yea, that's fine. Yea, that's

19 fine.

20 A These are the color photographs that I took and it would be the edge of

21 the concrete pad. It depicts the concrete, what appears to be blood, snow,

22 and what I thought was some type of ash/tobacco, if you will, in the snow.

23 Q Let me show the jury so they know what we're talking about. There

1 were some things -- the prosecutor brought up a couple of things. Number
2 one, there appeared to be some blood here; correct?
3 A Yes.
4 Q And then here it looked like there was some fresh -- well, somebody
5 had smoked a cigarette? There was some ashes from tobacco at that point;
6 correct?
7 A Possibly. I'm not sure what it was because it was never tested. It just
8 looked like ash.
9 Q Somebody smoked a cigarette there. You know, it hadn't been
10 trampled in the snow; correct? It looked fairly recent?
11 A Yes.
12 Q And then right here there's what looks like a footprint; correct?
13 A Yes.
14 Q Now, to put it in perspective, looking at now State's exhibit '21', the
15 same view where we were before; correct?
16 A Yes.
17 Q Now, I'd like to hand you what's been marked as defense exhibits 'G',
18 'H', 'I', 'J', 'K' and 'L'. We need to turn the light on for just a little bit.
19 (WHEREUPON, witness reviewed exhibits.)
20 Q I'd like for you to look at those. Do those appear to simply be images,
21 maybe blown up, from exhibits '21' and '22', pictures that you took of that
22 area that you just described?
23 A They are.

1 Q Okay. Looking at, for example, defendant's exhibit 'H', does it appear
2 as if inside the footprint there appears to be some blood? You have other
3 images there if you need to look at them closer.
4 A One appears to be blood, and I believe the other two probably are
5 leaves underneath the footprint. Brown leaves.
6 Q So, right here, for example, that appears to be blood?
7 A Yes.
8 Q And these discolorations there appear to be things underneath the ice;
9 correct?
10 A Yes.
11 Q Was this piece of -- was that blood collected; do you know?
12 A I do not believe it was.
13 Q We do not know whose blood that is; correct?
14 A Yes. Correct.
15 Q Looking at defense exhibit 'I', well, it sort of shows three things. It
16 shows right here it looks like -- does that appear to be blood on the concrete
17 slab?
18 A It appears to be.
19 Q And then that trail, I guess, continues out into that other piece of area
20 with the ashes in-between; correct?
21 A Yes.
22 Q I think I asked you, but just in case I didn't, defense exhibits 'H', 'I', 'J',
23 'K' and 'L', well, 'G', 'H', 'I', 'J', 'K' and 'L', those all fairly represent -- well,

1 these are your images, but just blown up to a greater degree, correct?

2 A Yes.

3 Q And they're fair and accurate representations of pictures you took on

4 that day?

5 A Yes.

6 Q The jury saw a lot of pictures. I'm not going to put them up there

7 again. But, we saw pictures of broken glass from the storm door, correct?

8 A Correct.

9 Q Did it appear as if the blood was on top or underneath the broken

10 glass?

11 A I don't have an opinion of that. I can't tell one way or the other. That

12 was something I never examined on that particular day.

13 Q You had the opportunity to -- you took a stick, a dowel rod, and you

14 were able to create some angles through the door. Do you recall that?

15 A Yes.

16 Q If I could hand you State's exhibits '33', '39', and '43'? Are these the

17 images -- you can look at them. Sorry. I'll put them up on the screen. State's

18 exhibit '43', as an example, would show -- well, does this appear to be a rod

19 or a stick, a dowel rod, that you put in through the entry, the bullet entry into

20 the door?

21 A Yes.

22 Q And the height right here, well, the height is how high?

23 A I can't tell from this photograph.

1 Q Let me hand you all of your photographs. You measured the height;
2 correct?
3 A Yes.
4 Q Was it four feet five inches maybe? I'll hand you all of your pictures so
5 you can refresh your recollection.
6 A It's between four feet five and four feet six inches.
7 Q Okay. It's rising at a fairly -- well, were you able to figure out the angle
8 of how high it was rising?
9 A No. Although it depicts the bullet hole, I don't believe that is a fair and
10 accurate -- it was in a downward position.
11 Q What do you mean?
12 A Well, the dowel rod indicates the hole. But, it's my opinion it didn't
13 come from an upward angle.
14 Q It came from a downward angle?
15 A It came from, in my opinion, it came from a horizontal angle.
16 Q Okay. So, this dowel rod is not depicting the trajectory of the bullet
17 then?
18 A It is, but it is still in a fashion that you would have to push it all the way
19 through in order to get -- I placed that in there to show that there was a bullet
20 hole there.
21 Q And is that the bullet hole, or, bullet that you believe went into the
22 freezer?
23 A It is.

- 1 Q If you look at the picture of the freezer, the height of the entrance into
2 the freezer mechanism just beyond the door is four foot three inches?
3 A Yes.
4 Q So, from the door to the freezer the bullet goes down two inches within
5 a matter of, say, a foot and a half, correct?
6 A It drops.
7 Q And that would be consistent with the trajectory that you have put in
8 there, correct?
9 A It does drop a little.
10 Q Two inches within a couple of feet, correct?
11 A Yes.
12 Q If you could open State's exhibit '68', just the plastic bag there?
13 State's exhibit '68', is this the envelope that contains one of the shell casings
14 that was on the cement slab?
15 A I'd have to see the envelope. It's a shell casing. A Winchester nine
16 millimeter. It was on the patio.
17 Q So, yes?
18 A Yes.
19 Q Now, I want to talk about the property room for a minute. You're in
20 charge of the property room, correct?
21 A Co- in charge, I would say.
22 Q You and Officer Whitney?
23 A Yes.

1 Q And from 2009 until now have you changed property rooms?

2 A I left in 2012. I'm assuming by looking at the bar codes that are used
3 now that something was changed. What exactly, I don't know.

4 Q Do you know if the facility has changed at all? Do you have any idea
5 of what's happened in the property room since 2012?

6 A I know there was a remodeling that was done.

7 Q So, all the property was moved while it was remodeled and then put
8 back either there or in another place; correct?

9 A I can only assume it was.

10 Q And the idea with property rooms is that -- well, is there a protocol?

11 A Yes.

12 Q And the protocol would be -- well, let's assume that this object is found
13 here. It's collected by somebody that's qualified to collect it. It's bagged. It's
14 taken to a property room. It's registered in, or, logged in to the property room
15 and it sits there; correct?

16 A Yes.

17 Q That's the idea; right?

18 A It's housed within a certain area in the property room.

19 Q Then if somebody wants to look at it they would have to talk to you or
20 Officer Whitney; correct?

21 A Yes.

22 Q And then you would get it for them, log it out to them, and they would
23 do whatever they're going to do with it, and then whenever they were done

1 they would bring it back to you and you would log it back in; correct?

2 A Yes.

3 Q And that is crucial for the integrity of the evidence; correct?

4 A Yes.

5 Q That allows documentation as to where evidence is at all times; right?

6 A Yes.

7 Q So, if we use just this casing, for example. I'm going to hand you
8 what's been marked as Defendant's exhibit 'M'. Does this appear to be the
9 property log in this case? I'm going to save that casing until later. Just
10 answer that question.

11 A It appears to be.

12 Q And does this appear to be the log dealing with one of the nine
13 millimeter casings?

14 A It would be, I'm assuming, the updated version of the property room
15 chain of custody. It looks like it is of the Winchester nine millimeter.

16 Q Okay. And just so I can show the jury for a second, as it relates to
17 Defendant's exhibit 'M' dealing with the, well, chain of custody of this, well,
18 the way it would work is, for example, it was transferred from you to C block.
19 What is C block?

20 A It was an area where the property was stored.

21 Q Okay. And then it would go from C block on February 23rd and on
22 February 24th it was transferred to Bowling Green; correct?

23 A Yes.

1 Q And then from Bowling Green back to some officers. Would those be
2 people that gave it to you, you or Whitney? In other words, it was transferred
3 from Bowling Green to at least two individuals. Who would that be; if you
4 know?

5 A The property was picked up by Officer Goedde and it was received into
6 property by Identification Officer Adkins.

7 Q Okay. That's another Officer - Adkins?

8 A Yes.

9 Q So, there's Whitney -- so, it's not just you and Whitney? Adkins is also
10 in that chain?

11 A Yes.

12 Q And would Carman also be in that chain?

13 A Yes.

14 Q And would K.W. also be in that chain?

15 A Yes.

16 Q And then would Don also be in that chain?

17 A Yes.

18 Q When I say chain, they had authority to enter the property room?

19 A They had authority to handle the property from transportation to the
20 property room, et cetera.

21 Q Okay. So, now this shows that from C block it went to Detective Clark
22 on May 19th, 2010; right?

23 A He obtained it and then transferred it to Officer Adkins.

1 Q Outside of the property room; correct?

2 A Yes.

3 Q Between May and October where was this because it doesn't go --
4 Adkins doesn't put it back into the property room until October of 2010, some
5 five months later, correct, according to your records?

6 MRS. KOHLRIESER: Your Honor, may we
7 approach just a moment?

8 THE COURT: Sure.

9 (WHEREUPON, Court and counsel had a brief discussion at the Bench, on
10 the record, as follows.)

11 MRS. KOHLRIESER: Just a couple of
12 things. Obviously the first part of the exhibit has Don's name on it. These
13 records were just obtained. It's a totally new system. Don said he's
14 assuming that's what happened. He's trying to ask him about what other
15 people did and things of that nature and Don, well, clearly in 2014 he was not
16 even remotely in charge of this. He did say he's assuming this. He's
17 testifying by talking about assumptions.

18 THE COURT: I'm going to overrule it.

19 (WHEREUPON, Court continued on the record, as follows.)

20 THE COURT: Okay. Continue.

21 Q That's the way it appears; correct?

22 A Yes.

23 Q Okay. And you worked with chain of custody and chain of custody

1 logs in the property room for how many years?

2 A I was briefly in there for six months.

3 Q But, you were in charge at that time?

4 A Co-charge; yes.

5 Q You and Officer Whitney?

6 A Yes.

7 Q And the logs that you kept, the chain of custody logs, and transfers
8 from and transports to, record created by, date, and comments, well, that's a
9 fairly common diagram; correct?

10 A Yes.

11 Q That's how the logs would look? In the olden days I suppose it was
12 written in; right?

13 A Yes.

14 Q People would write it. Now, corresponding to those dates should there
15 also be on the actual envelope itself dates that would correspond roughly? In
16 other words, do you have to put your initials on the envelope every time that
17 envelope is opened? Is that the protocol?

18 A After it's sealed. When the person seals it then their initials go over the
19 top of the paper and also the cellophane.

20 Q Just trying to get to -- so, the protocol would be you collect that at the
21 scene and you put it in a bag and you seal it and you put your initials on it;
22 right?

23 A Yes.

1 Q If then I'm a detective and I get it from you and then I open it to look at
2 it or to send it wherever it goes, then when I reseal it, if I was a detective or if I
3 was somebody at B.C.I. or if I was whoever, when I reseal it I put my initials
4 on where I reseal it; correct?

5 A Yes.

6 Q That's the protocol. Just looking at this, as an example, for 2010
7 where we saw the property was taken out in May and returned in October, do
8 you see any markings that would show that this envelope was opened in any
9 time in 2010?

10 A Looking in detail, I can't tell. There's a date on this. I can't tell what it
11 is. It quite possibly could be June 21st maybe.

12 Q Okay. Let me talk to you about -- well, are you referring to this part
13 right here?

14 A Yes.

15 Q Also on Defendant's exhibit 'M', so I don't have to recall you, but the
16 jury hasn't seen this piece of evidence yet, but I assume that they will at some
17 point, this deals with, well, it looks like black gloves; correct?

18 A Yes.

19 Q Just to go through some examples, Clark, Tim Clark, February 23rd to
20 Detective Bureau. Who's K.W.? Is that Whitney?

21 A Ken Whitney.

22 Q Okay. Then two days later received from Tim Clark to you and then
23 Ken documented that; correct?

1 A Yes.

2 Q So, then on March 13th, 2009 it goes from C block, which is
3 someplace in the property room; right?

4 A Yes.

5 Q To an Officer Hammond and Officer Adkins documented that transfer;
6 right?

7 A Yes.

8 Q Does it show the black gloves ever being returned to the property room
9 from March 13th? The next thing I see is December 12th where they start off
10 in the property room and go to Adkins. Does it show when and who returned
11 the gloves from March 13th so that they could then be taken from the property
12 room in December? Do you understand the question?

13 A Yes.

14 Q Is there any documentation as to what happened between March 13th
15 and December 12th, March 13th, 2009 and December 12th, 2013?

16 A Hammond is a B.C.I. agent. He would have had these gloves given to
17 him to take to B.C.I. and that would have been around March 13th and then
18 returned on or about December 12th, I'm assuming.

19 Q Well, that doesn't show that, though. That shows from C block to
20 B.C.I. in 2009; right? To B.C.I.?

21 A Right.

22 Q Right? Okay. So, we know that Hammond is B.C.I.?

23 A Right.

1 Q Okay. Now, they're at B.C.I. presumably somewhere around this, and
2 we'll bring in B.C.I. to talk about it. But, then somehow they're back in the
3 property room to be taken out four years later. There's no record of when or
4 how they were returned to the property room. Do you agree with that?

5 A I can't answer how, or, the problem with this. I can't answer that. I
6 don't know.

7 Q The record seems to be, as we're looking at this, against protocol;
8 correct?

9 A Yes, sir.

10 Q It's not showing it being documented as returning so they can be
11 removed again four years later. Would you agree with that?

12 A It does look like it has a problem with protocol.

13 Q Also, if we look at Defendant's exhibit 'M', -- just as another example.
14 I'm not going to go through every page of this. But, just as another example,
15 dealing with the camouflage. It would show here, again, --

16 MRS. KOHLRIESER: Jon Paul, what item
17 number is that so I can find it?

18 MR. RION: It's number two thirteen.

19 Q Same issue. I.D. Bureau, that's you guys, to Hammond, and that's
20 B.C.I., in March of 2009. Then, once again, the next thing we see in the
21 property room as far as identification is that in 2013 we're showing from
22 property room to Adkins, and the record created by Officer Carman. Same
23 question and same answer, I assume?

1 A What's the question?

2 Q This would appear to be inconsistent with your protocol as far as the
3 way this is being documented; correct?

4 A I can't answer for -- my name is not on there, and so I can't answer for
5 what these officers did.

6 Q Same question, though - as far as your knowledge being in charge of
7 the property room, the deal with the property room is you document when it's
8 in and when it's out and when it returns and when it goes out again; correct?

9 A Yes.

10 Q That does not appear to demonstrate that protocol, at least from what's
11 in the records that you say are those records; correct?

12 A Yes.

13 Q At the time that you documented the scene on McKibben were you
14 given any operative facts about any statements of any witnesses?

15 A While I was at the scene of East McKibben?

16 Q Yes.

17 A No.

18 Q So, your investigation and documentation of the evidence is separate
19 from, say, Detective Clark or another officer's responsibility of interviewing
20 people and the two of you don't collaborate as far as 'hey, look for this', or,
21 'make sure you document that', et cetera?

22 A That's correct.

23

MR. RION: Can I have one second?

1 THE COURT: Sure.

2 (WHEREUPON, Court went off the record briefly.)

3 Q You were over at the Eureka site later that day, but you were simply
4 there to take evidence that had already processed and bagged and take it to
5 the property room, or, to the Police Station; correct?

6 A Yes.

7 Q You described that there's a closet that's separate from the property
8 room. Do you recall that testimony yesterday?

9 A Yes.

10 Q Is the closet close to the property room?

11 A No.

12 Q Is it in the same building?

13 A It was in my office at the time. It was an office closet.

14 Q Okay. When I think of a closet I just think of a regular closet. You said
15 it had a lock on it. Am I imagining correctly, or is there something special
16 about the closet?

17 A It's a closet with a deadbolt lock on it.

18 Q Okay. And that closet is utilized often for the storage of evidence until
19 it is processed into the property room proper; correct?

20 A It's a part-time transfer.

21 Q So, not just for this case, but for every case in the county where
22 evidence is collected it may end up in that closet before it goes to the property
23 room; is that correct?

1 A Not every time; no.

2 Q No. It may? It's possible? In other words, a lot of evidence would flow
3 through your office and then into the property room?

4 A Right. But, not necessarily through that property closet.

5 Q I understand. Not every day. And that evidence can range from cases
6 involving drugs; correct?

7 A Yes.

8 Q Cases involving weapons?

9 A Yes.

10 Q A whole variety? Anything that could possibly come through as a
11 significant case where property has to be kept could, not always, but could
12 pass through that property closet on its way to the property room; correct?

13 A Only if it does not need dried. If you have something that has
14 biological evidence on it you have to let it dry and that's not proper protocol to
15 place it in there. It doesn't dry properly.

16 Q There are times when property such as clothing, et cetera, well, do you
17 have like a table in the property room or in your office where things can be
18 documented with pictures? In other words, the clothing after it's dried, for
19 example, you spread it out and you can take a picture of it and it's for
20 evidentiary value?

21 A Yes.

22 Q Is that in your office or is that in the property room or right outside the
23 property room?

1 A It's, as I recall, it's separate. It was in another room.

2 Q Okay. When you were there in 2012 these plastic bags were not in
3 service; correct?

4 A No.

5 Q So, what we would have are these manila envelopes with the
6 handwriting on it; correct?

7 A Yes.

8 Q And they weren't sealed by a vacuum seal or anything at that time;
9 correct?

10 A No.

11 Q Thank you, sir.

12 THE COURT: Okay. Any redirect?

13 MRS. KOHLRIESER: Just a couple of
14 follow-ups.

15 **REDIRECT EXAMINATION**

16 **BY MRS. KOHLRIESER:**

17 Q Detective Marik, you left the Lima Police Department in 2012; correct?

18 A Yes.

19 Q And the logs that Mr. Rion showed you just now, being marked as
20 Defendant's exhibit 'M', that's not at all what they looked like when you were
21 in charge of the property room; is it?

22 A No. No, it's not.

23 Q Now, you still have, obviously, you have some dealings with the Lima

1 Police Department; correct?

2 A Sometimes.

3 Q You've been up there recently?

4 A Yes.

5 Q Okay. And you're aware that they've remodeled and they've updated
6 their computers?

7 A Yes.

8 Q Okay. Now, Mr. Rion showed you -- let's look at item one oh eight in
9 Defendant's exhibit 'M'. Take a look at that for me for just a second. Now,
10 understanding that this isn't quite the way you necessarily did it, but it says
11 'record created by' and let's take, for instance, and I'll put it up here, it would
12 be Adkins and Goedde on the third line down. Let's take a look at the third
13 line here; okay? Now, that says Goedde. He would have been an officer in
14 the drug unit; correct?

15 A Yes.

16 Q Okay. And the drug unit had their own type of property system for drug
17 evidence; correct?

18 A Yes.

19 Q Okay. So, were there times when, say, someone from the drug unit
20 was going to run to B.C.I. in Bowling Green for things to be tested and they
21 would also run stuff up for the I.D. Bureau?

22 A Yes.

23 Q Now, when they did that they basically just took the envelope as is;

1 correct?

2 A Yes.

3 Q They wouldn't open it up and make sure that what you had put on this
4 envelope was, in fact, what they were taking up there; would they?

5 A They kept it sealed.

6 Q Okay. So, when it gets checked out to somebody it doesn't
7 necessarily mean that the envelope even gets opened; correct?

8 A It does not get opened.

9 Q Okay. So, just because we see that logged part that doesn't mean that
10 that person opened that piece of evidence; correct?

11 A That's correct.

12 Q And is that what you're talking about - if they do open it and reseal it
13 that's when they initial it and date it?

14 A Yes.

15 Q Okay. In fact, you have had a chance to look at some of these exhibits
16 since you took them into evidence; correct?

17 A Yes.

18 Q In fact, just last week Mr. Miller and myself were over there to look at
19 exhibits with you and the I.D. Bureau; correct?

20 A Yes.

21 Q And, if you recall, there were things that we didn't even open; were
22 there?

23 A Nothing was opened.

1 Q I think we were simply marking them at that time; right?

2 A Yes.

3 Q Now, the plastic envelope that State's exhibit '68' is and then there's
4 the manila envelope inside which Mr. Rion opened, those initials and dates on
5 there are from what years - just on the plastic part?

6 A The initials look like M.L.C., July 21st, 2015. Then there's another seal
7 at the top with K.K., August 4th, August 4th of 2015.

8 Q Okay. Now, there's also some other officers that were referenced. I
9 guess if you would, for the jury, in 2009, and I think you said six months, you
10 were basically covering a vacated spot; correct?

11 A Yes.

12 Q Who had left that position?

13 A Dave Hammond.

14 Q Okay. Where did he go?

15 A The Bureau of Criminal Investigation.

16 Q Okay. The State crime lab?

17 A Yes.

18 Q But, he was an Identification Officer for the Lima P.D. for a number of
19 years; correct?

20 A Yes.

21 Q Okay. Now, would it be uncommon, to your knowledge, for Officer
22 Hammond, even though he switched to Bowling Green to the B.C.I. facility
23 there, to transport evidence to Bowling Green for the Lima Police

1 Department?

2 A He's a local agent and so it's not uncommon to call upon him if we
3 needed him for something and it's not uncommon for him to transport.

4 Q Okay. He actually lives here in Lima even though he works in Bowling
5 Green; correct?

6 A Yes.

7 Q And, as a courtesy, if we need something taken he'll often times take it
8 for us; correct?

9 A Yes.

10 Q Okay. Do you recall the officer that replaced you in the I.D. Bureau?

11 A It was Greg Adkins.

12 Q Okay. So, the Adkins we saw on Defendant's exhibit 'M' would be the
13 person who became the property officer and replaced you; correct?

14 A Yes.

15 Q And you were actually doing double duty; weren't you?

16 A Yes.

17 Q You were being a detective and being a property officer?

18 A Yes.

19 Q Okay. Are you aware of whether or not Officer Kenny Whitney retired
20 as well?

21 A Officer Whitney retired.

22 Q You don't have to recall the year. That's okay.

23 A He retired two weeks after I did in 2012.

1 Q Okay. And do you know who replaced him at the Lima Police
2 Department as the second I.D. officer?

3 A Mike Carman.

4 Q Okay. So, when we see Adkins and Carman, those are L.P.D.'s
5 current I.D. officers; correct?

6 A Yes.

7 Q And they were the direct replacements for you and Officer Whitney?

8 A Yes.

9 Q And you were Dave Hammond's immediate replacement; correct?

10 A Part-time; yes.

11 Q Okay. Part-time? Gotcha. Now, that closet you mentioned, at the
12 time that you were an I.D. officer that, in fact, was the I.D. Bureau where that
13 closet was; correct?

14 A Yes.

15 Q Okay. But, that's not where the entire evidence storage was; correct?

16 A No.

17 Q That was actually housed in a separate room in the basement of the
18 Lima Police Department?

19 A The basement and we also utilized locked storage on the second floor.

20 Q Yes, the upstairs storage. And often times that's where murder
21 evidence went, correct, the upstairs storage?

22 A Yes.

23 Q Now, regardless of whether it was the basement, the upstairs

1 storage, or the closet, were those all locked rooms?

2 A Yes.

3 Q Okay. Who would have keys to those locked rooms at any given
4 moment of time?

5 A It would be the Identification Officers and potentially one of the higher
6 supervisors at the Police Department.

7 Q And that would be it; correct?

8 A That would be it.

9 Q Okay. When I talk about the drug unit, they had their own storage for
10 drug related items; correct?

11 A They're off site; yes.

12 Q They're off site. Okay. So, they wouldn't have keys to your storage?

13 A No.

14 Q Now, when these items are in the closet do you just throw them all in
15 there?

16 A No. They're placed in one separate area so we know where they are.
17 They're usually placed in a box so when we go back in to inventory everything
18 it's right there and right in front of us. We know exactly where everything is.

19 Q Okay. And their bags are closed over; correct?

20 A Yes.

21 Q So, it's not just, you know, --

22 MR. RION: Objection. It's leading.

23 THE COURT: It is leading.

1 MRS. KOHLRIESER: Okay. I apologize.

2 Q Was there a risk of cross-contamination in that closet?

3 A No.

4 Q Was it maintained in a way to prevent that?

5 A Yes.

6 Q Were there times that, and I'm just going to show you State's exhibit
7 '77' as a reference point, these white stickers with the red writing on them,
8 was there a time when you would seal this and then you would fill this sticker
9 in at a later time?

10 A Yes.

11 Q And is that what you wrote on the back to make sure what this item
12 was?

13 A It's also to refresh my memory as to what was in there.

14 Q Okay. Now, let's talk a little bit about these photographs that Mr. Rion
15 went over with you. Let's look at State's exhibit '33'. You tell me if you need
16 to see it.

17 A The photograph is of the left side of the house. It would be the
18 entrance door into that home. It was the door with blood and indentations on
19 it and also the dowel rod through the bullet hole.

20 Q Okay. The dowel rod is obviously much longer than a bullet; correct?

21 A Yes.

22 Q I'm sorry. My pictures are all out of order here.

23 A Terri?

1 Q Thank you. Let's look at State's exhibit '47' for a second. I'll show it to
2 you up close, Detective Marik. What is '47'?

3 A That's the kitchen door. It would be the inside. Again, that's the
4 interior door. It's a metal door. It's got the tape measure between four foot
5 four and four foot five. It's also showing the jagged, well, it would be the exit
6 of the projectile.

7 Q Okay. So, that's basically the exit wound from what we saw on the
8 previous picture?

9 A Yes.

10 Q And that's the one that ended up going into the freezer?

11 A Yes.

12 Q Okay. Now, I realize you're not a ballistics expert, but do you know
13 what happens when a bullet hits a hard object? Does it stay on the same
14 trajectory all the time?

15 A It loses energy if it hits something of a hard mass, such as this metal
16 door. It's obviously going to drop a lot of energy and either fragment or
17 continue on at a slower, well, slower velocity.

18 Q Okay. So, when you're putting - you can turn the lights back on, Sue -
19 when you're putting those dowel rods in there you're simply showing up holes
20 and where they ended up; correct?

21 A Right.

22 Q Okay. That's not for sure some certain trajectory that it came from or
23 some ability to tell necessarily where the shooter was exactly standing or that

1 type of thing; is it?

2 A Right. I'm not qualified exactly into that study.

3 Q You're simply pointing out the holes?

4 A Yes.

5 Q Now, Mr. Rion also showed you what appeared to be blood in what he
6 referred to as a footprint. I'll show you State's exhibit '22'.

7 A Yes.

8 Q Let's assume for a minute that that is a footprint. Is there anything
9 there that would have been identifying for you? Are there ridge details or any
10 kind of that type of thing where you could tell size or anything of that nature?

11 A Size? Potentially. But, it's my opinion that that is an old footprint
12 because of the ice that's in it.

13 Q It looks sort of like it had melted?

14 A Yes, melted and refroze.

15 Q Mr. Rion also referred to that picture and the one just before it. The
16 one you can actually see is exhibit '22' where we've got some spots of what
17 appear to be blood here on the pavement and then when he asked you about
18 possibly blood in this print itself.

19 A Yes.

20 Q Were you able to make some kind of determination that that was a
21 trail, which was Mr. Rion's word?

22 A In my opinion it was not a trail.

23 Q And when looking at the crime scene as a whole, and obviously we've

1 seen a number of pictures and I'm not going to put them back up there, did it
2 appear as if Mr. Warrington had lost a fair amount of blood?

3 A Yes.

4 Q I'm sure you've probably seen bloodier scenes; correct?

5 A Yes.

6 Q But, it's fair to say that there was a decent amount of blood?

7 A Yes.

8 Q Some was splattered on the door?

9 A Yes.

10 Q And then obviously on the patio where he went down?

11 A Yes.

12 Q Now, the majority of your pictures were taken around the perimeter of
13 the crime scene; correct?

14 A Yes.

15 Q But, you also said you took some pictures to kind of try and get the
16 area of the other homes?

17 A Yes.

18 Q You didn't go investigating those houses, though; did you?

19 A No.

20 Q Or documenting things with them. State's exhibit '11'. Do you
21 remember me asking you about the house that was back there?

22 A Yes.

23 Q Did you document that and whether there were any motion lights on it

1 or anything of that nature?

2 A No, I did not.

3 Q And can you tell from your photographs whether there was or there
4 wasn't?

5 A If this is the house that's on Pearl Street, which is in the background of
6 436, I can't make a determination if there's lights on there or not, or even if
7 the house still exists today.

8 Q Okay. So, there could have been, but you --

9 MR. RION: Objection. Leading.

10 THE COURT: Sustained.

11 MRS. KOHLRIESER: Okay.

12 Q Could there have been?

13 MR. RION: And calls for speculation.

14 MRS. KOHLRIESER: It goes directly to --

15 Q Well, you don't know one way or the other?

16 A Yes, that's correct.

17 Q So, there could have been a light?

18 MR. RION: Objection.

19 THE COURT: I'm going to sustain the
20 objection.

21 Q And then, lastly, when we're talking about this area, again, and Mr.
22 Rion was asking you some questions about the tire marks for the vehicle that
23 belonged to Mr. Warrington - do you recall those questions?

1 A Yes.

2 Q Again, was this a nice fresh powdery snow?

3 A It had probably snowed in the last couple of days. It did not snow that
4 night. But, it was still somewhat powdery if one did not walk through it or
5 drive through it, et cetera. This snow was the type that appeared, well, it had
6 snowed and then there was some thawing action and then froze again. There
7 was no recent snow on that particular day.

8 Q Was it a hard packed type of snow and ice?

9 A Yes.

10 Q I'm sorry. Just a couple of follow-ups. When we were talking about
11 the door and the entry wound into the door, as I keep calling it, and the exit
12 wound, when a bullet, from your experience and training as an I.D. officer and
13 being on the street, have you fired a weapon?

14 A Yes.

15 Q Many times?

16 A Yes.

17 Q Okay. Do bullets deflect when they hit something? Do they go
18 different places at different times?

19 A Yes.

20 Q Then, again, I apologize as these exhibits are all out of order, but in
21 looking at State's exhibit '47' one more time for me, -- okay?

22 A Yes.

23 Q In this, I guess, shredding of the door, or whatever you want to call it,

1 can you tell whether that was going up, or down, or straight, or sideways, or
2 any of that?

3 A From that photograph it's still in a motion to go straight. It's peeled in a
4 somewhat downward motion. Again, that's a metal door.

5 Q Sure. Steel entry door?

6 A Steel door; right.

7 Q The evidence, again, once it's bagged, whether it gets moved from a
8 closet to the C block or wherever it goes, does it remain bagged and sealed
9 unless someone actively has to open it?

10 A That's correct.

11 Q And you can see the areas -- can you see the areas where someone
12 has opened it?

13 A You can see it, yes, and then after it's resealed.

14 Q Okay. So, if I were to just come in your evidence room and take
15 scissors and cut this bag open someplace and say I don't seal it or anything
16 like that or I don't initial it, well, would you be able to tell that it was damaged
17 upon looking at it?

18 A Yes.

19 Q If you found an item like that would you make attempts to figure out
20 how that would have happened?

21 A I would be concerned about it.

22 Q Because, again, only certain people have a key to that room?

23 MR. RION: Objection. Leading.

1 THE COURT: And it's been asked and
2 answered a couple of times. So, sustained.

3 Q All right. Lastly I'm going to show you, again, Defendant's exhibit 'M'.
4 It's the chain of custody reports and specifically for item number one oh eight.
5 I'm going to put this up here. You can read it when I put it up here. I'll ask
6 you about this first couple of dates. Okay. This first one is you placing it in --
7 excuse me. What is this first one?

8 A It's transferred from me and transferred to C block.

9 Q Okay. That would be what? What's C block?

10 A That would be technically the property room.

11 Q Okay. And then the very next transfer is what?

12 A It comes from me taking it out of C block and transferring it to Bowling
13 Green to the crime lab.

14 Q So, when you say Bowling Green you're referring to B.C.I.?

15 A The crime lab; yes.

16 Q What date is that?

17 A February 24th, 2009.

18 Q And is that what you were referring to when you said about the autopsy
19 you may have had a stop?

20 A Yes.

21 Q Okay. In fact, did you drop off evidence at Bowling Green on that day?

22 A Yes.

23 MRS. KOHLRIESER: Nothing further at

1 this time.

2 THE COURT: Okay. I'll give you a full
3 chance to do recross. Do you know, or, anticipate how long it might be?

4 MR. RION: Less than five minutes, your
5 Honor.

6 THE COURT: Well, I mean, I don't want to
7 limit you at all.

8 MR. RION: I know.

9 THE COURT: But it's about close to time
10 for a break. Would you rather -- do you think five minutes or so?

11 MR. RION: Just so there's no -- I don't feel
12 like -- well, depending on his answers, so it might be a little longer.

13 THE COURT: All right. All right. Well,
14 let's take a break. That's fair if we take a break before you do recross?

15 MR. RION: Yea, that's fine.

16 THE COURT: All right. Let's take a break,
17 folks. Remember the admonitions. Don't discuss the case among yourselves
18 or with anyone. Don't formulate any opinions, express any opinions, or have
19 any contact with anyone. Again, if you ever feel like someone is having
20 improper conversation or contact in proximity to you that would affect your
21 ability to be fair and impartial, well, bring it to our attention.

22 We'll stand in recess for fifteen minutes.

23 (WHEREUPON, COURT WAS IN RECESS.)

1 THE COURT: We're reconvening this 11th
2 of September, 2015 in CR2014 0139, State of Ohio -vs- Markelus Q. Carter.
3 The defendant is present with counsel. The State is present.

4 The Court has, on its own motion, brought in juror, well, she's actually
5 juror number two on the list, but I know she's been sitting in one because of
6 the logistics of it. Mrs. Coon, I brought you in here. I'm kind of, well, I don't
7 know how to say it, it's uncomfortable for me to ask some questions and I
8 want to do this with the utmost respect, but the Court has noticed that it
9 seems like you shut your eyes at times. Have you been able to -- are you
10 paying attention? Are you hearing everything?

11 JUROR NUMBER TWO: Oh, yes. I have allergies and my eyes itch and
12 burn a lot.

13 THE COURT: Oh, okay.

14 JUROR NUMBER TWO: I've found if I close them for a few seconds it
15 relieves that.

16 THE COURT: Okay. I mean, this is my
17 impression. So, please don't take any disrespect.

18 JUROR NUMBER TWO: I'm sorry.

19 THE COURT: You haven't been asleep or
20 anything; right?

21 JUROR NUMBER TWO: No. I can hear everything.

22 THE COURT: Okay. I know this isn't
23 maybe the most exciting part of the case that we've been through and the

1 lights go off. But, you've been able to hear everything?

2 JUROR NUMBER TWO: Yes.

3 THE COURT: And the shutting of your
4 eyes is just because of allergies?

5 JUROR NUMBER TWO: Yes. It just relieves that a bit.

6 THE COURT: Okay. Okay. All right. So,
7 you've been able to pay attention? It hasn't interfered with your ability to
8 listen and be fair and impartial or anything like that?

9 JUROR NUMBER TWO: Yes; uh-huh.

10 THE COURT: I'm sorry then that I asked
11 those questions.

12 JUROR NUMBER TWO: That's fine.

13 THE COURT: But, when I see -- and I look
14 over occasionally and if I see something, well, I noticed that one juror, you
15 know, was kind of wiggling around and needed a break, or somebody needs
16 a drink, or someone's not feeling well. I'm trying to make sure -- well, my
17 eyes are everywhere. So, I noticed that. But, that's not -- you haven't been
18 dozing off or anything; right?

19 JUROR NUMBER TWO: No. That's just the allergies affecting --

20 THE COURT: Okay. All right. Well, I
21 brought you in here alone because I didn't want to ask these kinds of
22 questions in front of everybody. Okay. So, you've been able to pay attention
23 to everything?

1 JUROR NUMBER TWO: Oh, yes.

2 THE COURT: Okay. Good. Anything
3 from counsel to follow-up?

4 MRS. KOHLRIESER: No, your Honor.
5 Thank you.

6 MR. RION: No, sir.

7 THE COURT: Okay. Sorry for the
8 inconvenience. Let's bring everybody else in. The witness can take the
9 stand. If that helps your allergies, continue to do that. Okay?
10 (WHEREUPON, jury was returned to the Courtroom.)

11 THE COURT: The jurors have returned to
12 the Courtroom. Ladies and gentlemen of the jury, it's happened in this case
13 now a couple of times. Sometimes it happens and sometimes it doesn't when
14 the Court has individual jurors in here to talk to them about certain things that
15 have come up. I told you in the beginning if there was ever any
16 uncomfortable or embarrassing, well, something that you wanted to share
17 with the Court we would do that on a one to one basis. So, I've done that
18 now in this case. The point is, those jurors that have talked with me
19 individually, well, I don't want that shared with other jurors. The other jurors, I
20 don't want you to feel left out if you're not individually asked any questions.
21 But, I also don't want you to speculate as to what's going on. If there's a
22 concern that everybody needs to know about I'll let everybody know. But, I'm
23 trying to make sure anything that might be confidential is kept confidential.

1 But, if it's evidence and it's important to the case all of you will know it. So,
2 just put out of your mind and don't consider for any reason the fact that
3 maybe on a couple of occasions I've had to talk to individual jurors. That's
4 just the way we're going to do it. Okay?

5 So, we've still got Detective Marik. I think we're at the point where the
6 defense can ask some questions on recross examination. Mr. Rion?

7 MR. RION: Thank you, your Honor.

8 **RECROSS EXAMINATION**

9 **BY MR. RION:**

10 Q I'm going to mark this as Defendant's exhibit 'N'. I'll put a sticker on it
11 in a minute. It's awfully crude, but let's just assume for a second, sir, that this
12 is the shed and this is the south side of 436 McKibben; okay?

13 A Yes.

14 Q And this is the roof and that would be, then, the north side of the shed;
15 all right? Let's assume that these marks here are to represent markings
16 somewhere on the shed itself indicating a motion light, motion detector with a
17 light attached to it. When you were at the scene on February 23rd, 2009 did
18 you see any motion detector and light that would be consistent with the
19 representation made in Defense exhibit 'N'?

20 A Referring to the photographs that I took it did not appear that there was
21 one there.

22 Q And, also, your independent recollection of that night/day, also you
23 have no independent recollection of a motion detector being on the roof of

1 that shed; correct?

2 A None noted.

3 Q So, the pictures that the jury saw of that shed, well, those were
4 pictures of the shed as it existed that day; correct?

5 A That's what I saw; yes.

6 Q Thank you.

7 MR. RION: Nothing further.

8 THE COURT: That was quicker than five
9 minutes. Thank you. All right. You may step down, Detective. The State
10 may call their next witness.

11 MR. MILLER: Doctor Maneesha Pandey.

12 THE COURT: Now, make sure you get all
13 these exhibits. Keep track of your exhibits. Detective, you don't have any
14 exhibits with you; do you?

15 A No, sir.

16 THE COURT: Okay. All right.

17 WHEREUPON, called to appear as a witness in this proceeding was one:

18 **DOCTOR MANEESHA PANDEY**

19 who, having been duly sworn by the bailiff herein, testified as follows:

20 BAILIFF: She has no objection.

21 THE COURT: Okay. Thank you. Okay,
22 Mr. Miller, when you're ready.

23 MR. MILLER: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. MILLER:

Q Doctor Pandey, good morning.

A Good morning.

Q Will you state your full name for the record, please?

A My name is Maneesha Pandey.

Q Okay. Where are you employed, Doctor Pandey?

A I'm employed at the Lucas County Coroner's Office in Toledo, Ohio.

Q And what is your title, if you have one?

A I'm a Deputy Coroner and a Forensic Pathologist.

Q How long have you been a Deputy Coroner and a Forensic Pathologist?

A For about eight years, eight/nine, around nine years.

Q What are your job duties as a Deputy Coroner and Pathologist?

A My job duties include performing postmortem examinations to determine cause and manner of death.

Q Okay. Are those commonly referred to as autopsies?

A Yes.

Q How many -- do you mind if I call them autopsies?

A Yes, that's fine.

Q Okay. How many autopsies have you performed over your last eight years or so in the capacity of your employment?

A I've performed about two thousand eight hundred autopsies.

1 Q Okay. Did many of those autopsies involve gunshot wounds?

2 A Yes.

3 Q Let's talk for a moment about your education.

4 MR. RION: Your Honor, I'm willing to
5 stipulate that this doctor is an expert in the field of forensic pathology and that
6 she be accepted as an expert in that field for the jury's determination.

7 THE COURT: Okay. Are you satisfied
8 with that, Mr. Miller?

9 MR. MILLER: Yes. I would like to, and I
10 appreciate that, but I would like to just, if we're going to get right to that,
11 submit her C.V. and have her identify that for the record.

12 THE COURT: That's fine. The stipulation
13 will be noted for the record that Doctor Pandey is an expert in Forensic
14 Pathology.

15 MR. MILLER: Just so we can complete the
16 record with her C.V.

17 THE COURT: Yea. Okay.

18 Q Doctor, I'm going to hand you what has been marked as State's exhibit
19 '78'. Can you identify that document, please?

20 A Yes.

21 Q What is that document?

22 A Exhibit '78' is my C.V.

23 Q Okay. What is a C.V.?

1 A A C.V. is a curriculum vitae which basically summarizes my
2 educational background and my certifications as well as clinical experience.

3 Q Okay. Let me ask this - I assume that you have to go through some
4 continuing education and you're constantly being trained on certain things
5 and going through an educational process. So, I have to ask, is that an
6 updated C.V. or do you have any training above and beyond what's noted on
7 that?

8 A This is a 2013 C.V.

9 Q Okay.

10 A So, beyond that it's more or less similar.

11 Q Okay.

12 A But, I just have more experience.

13 Q Right. Okay. So, you actually have more experience and training
14 beyond what's on that C.V.?

15 A Yes.

16 Q Okay. But, other than that, that's a true and accurate copy of your
17 C.V.?

18 A Yes.

19 Q Okay. Thank you very much. What does -- you talked about
20 autopsies. What's the purpose of an autopsy?

21 A The purpose of an autopsy is primarily to determine the cause of death
22 of the individual we are doing the autopsy on.

23 Q Okay. Do you, personally, when you're doing an autopsy, follow

1 certain steps when you do an autopsy?

2 A Yes.

3 Q Can you please, just generally speaking, take us through the steps that
4 you follow when you perform an autopsy?

5 A Okay. An autopsy, when we are doing one, basically what happens is
6 we have a deceased individual who comes to our facility. The death is
7 reported. The deceased individual is basically wheeled into the morgue area
8 where we do the autopsy. They're in a sealed body bag. So, once we
9 identify whose body it is, you know, sealed and with the identification I.D. on it
10 we open up the body bag. Once the body bag is opened we'll do what we call
11 an immediate external examination and we'll take immediate photos like as
12 how they have appeared to us so that nothing is changed. The primary
13 purpose of that is to know that this is how the body was recovered from the
14 scene and this is how it has come to us. After we have documented that in
15 my diagram, as well as photographically, we will start identifying, while we're
16 diagramming, any injuries, any kind of natural disease process, any kind of
17 blood, any kind of problems with the body in terms of, well, so that it can help
18 me determine the cause. Then we will go ahead and undress the individual
19 and we will collect clothes or examine the clothes, depending upon what the
20 case is. If there is law enforcement at the time of the autopsy, attending the
21 autopsy, they will take the clothes with them as evidence. Then we will wipe
22 off the body to examine the injuries more clearly and basically in more detail.
23 We will be looking at the front, the back, and the sides of the body to, you

1 know, determine any kind of injuries once again or any natural processes
2 because sometimes we see those, like for instance if there is a cancer, or
3 glaucoma, or something, or if there's like gunshot wounds or stab angles of
4 the injuries, or any kind of trauma, even, like blunt force injury like contusions,
5 bruises, and scrapings. After that we take photographs again. At every stage
6 we are taking multiple photographs to document because photographs are a
7 true documentation. I am, at the same time, diagramming. We will go ahead
8 and basically set up the body at that point to perform the internal examination.
9 So, all that what I've talked about was an external examination. Then we'll do
10 an internal examination. We make a Y shaped incision and we go inside the
11 body, the chest, and the abdomen, and the brain to see if there are any
12 injuries or any kind of disease processes. For instance, if you have a gunshot
13 wound to see if there's any kind of projectiles or anything. But, prior to that,
14 and especially for gunshot wounds, we also x-ray the body to see if there's
15 any kind of projectiles in there to be able to recover them. If it's just a normal,
16 like motor traffic crash, we will go inside and document what kind of injuries
17 there are internally. This also helps us to see the path and the whole
18 description of where the injury is, and how it is, and how it is all contributing to
19 the cause of death - did the person bleed a lot, did they have small injuries,
20 did they have big injuries, did it affect any major organs, or there's, you know,
21 blood clots sometimes and the lungs or the abdominal organs are floating in
22 their own blood. So, that is like a very major part for determining the cause of
23 death. I will also at the same time take some samples of blood, the eye fluid,

1 the urine, and stomach contents to send to toxicology. We send those to
2 toxicology and they will then go ahead and do the toxicology labs, the
3 toxicology tests. So, once the toxicology tests come back and after I have
4 reviewed all of my autopsy findings in terms of documentation of injuries or
5 disease processes I perform, well, I basically make an autopsy report and
6 examine everything, including investigation reports, to basically come up with
7 a cause of death.

8 Q Okay. Now, hearing all of that, and I know we have a stipulation as to
9 your credentials, but hearing all of that your education includes a medical,
10 well, a doctorate in medicine; correct?

11 A Yes.

12 Q In other words, you're an M.D.?

13 A Yes, I'm an M.D.

14 Q Okay. And then you have more training beyond that to become a
15 Forensic Pathologist?

16 A Yes.

17 Q Is that correct?

18 A That's correct.

19 Q Okay. I'm going to hand you what has been marked as State's exhibit
20 '96'. I'm going to represent to you that it is a certified copy of a death
21 certificate; okay?

22 A Okay.

23 Q Would you please read me the decedent's name on that death

1 certificate?

2 A Okay. On exhibit '96' the decedent's name is Kenneth Orman
3 Warrington.

4 Q Okay. On the, I guess, back, it's actually underfolded, the second
5 page, do you see the decedent's birthday, his date of birth?

6 A Yes.

7 Q Can you please read that?

8 A It's July 11th, 1955.

9 Q Thank you. Now, we've just mentioned the name here of Kenneth
10 Warrington. On or about February 24th of 2009 did you perform an autopsy
11 on an individual named Kenneth Warrington?

12 A Yes.

13 Q Did you prepare a report after performing that autopsy?

14 A Yes.

15 Q Is that usual?

16 A Yes.

17 Q Do you prepare a report after every autopsy?

18 A That's correct.

19 Q Okay. I'm going to hand you what has been marked as State's exhibit
20 '79'. Do you recognize that document? Take your time looking at it. It's
21 multiple pages; is it not?

22 A Yes.

23 (WHEREUPON, witness reviewed document.)

1 A Yes.

2 Q What is that document?

3 A Exhibit '79' is a case summary, and report of autopsy, toxicology
4 results, and photographs of Kenneth Warrington which were generated by the
5 Lucas County Coroner's Office.

6 Q Okay. Did you actually prepare that report?

7 A Yes.

8 Q Okay. In connection with the autopsy of Kenneth Warrington?

9 A Yes.

10 Q Let's leave that right here just in case we need to refer to that. Okay?

11 I should ask you - is that a true and accurate copy of your report?

12 A Yes.

13 Q When you prepare a report, generally speaking, do you have a certain
14 system that you follow in preparing your report?

15 A Yes.

16 Q Can you explain that system?

17 A Any report we will have to, once again, as we are doing the autopsy
18 that's how we prepare the report. We'll have an external examination and an
19 internal examination documented. The external examination we sub-divide it
20 into the name of the deceased, the age, and when the autopsy was
21 performed, as well as all those people who attended it. So, these are all
22 sub-headings. Then externally how did the person appear in terms of age,
23 height, weight, the clothing they were wearing, and if there was any kind of

1 any defect on the body in terms of evidence of injuries, which is another
2 sub-heading. Then you have an internal examination which is then divided
3 into each system, like cardiovascular system, the respiratory system, the liver,
4 and the endocrine system. Then, at the end if I have evidence like in terms if
5 there was anything special done, for instance, any radiology was done.

6 Q Okay. So, in both the examination portions of the autopsy and also in
7 writing your report you follow certain systems?

8 A Yes.

9 Q A certain pathway, if you will?

10 A Yes.

11 Q Okay. Now, referring to your report, you mentioned a case summary.
12 Is the case summary the first page of the report?

13 A Yes.

14 Q Okay. And on the case summary do you list the cause of death?

15 A Yes.

16 Q What is the cause of death listed in your report for Mr. Warrington?

17 A The cause of death for Kenneth Warrington is listed as multiple
18 gunshot wounds.

19 Q Uh-huh. And the manner of death?

20 A Homicide.

21 Q You also had noted, I think, on the case summary blunt force trauma.
22 Did you note blunt force trauma on Mr. Warrington as you did the autopsy?

23 A Yes.

1 Q Okay. Can you, and we're going to get into some pictures and so
2 forth, but can you just generally describe those injuries?

3 A Yes. Kenneth Warrington had blunt force trauma, like a scraping, off
4 his left forehead and around his left eye, both the knees, and the left leg.

5 Q You mentioned gunshot wounds. Do you recall how many gunshot
6 wounds Mr. Warrington had?

7 A There were six.

8 Q Okay. We'll get to those. But, there were six?

9 A Yes.

10 Q A total of six entrances?

11 A Entrances.

12 Q We'll talk about those in more detail here in a moment. On your case
13 summary do you also note the place of death and time, and the date and time
14 of death?

15 A Yes.

16 Q Okay. Can you tell me what the place of death is noted on your
17 report?

18 A Place of death in Kenneth Warrington's case summary report is house,
19 436 McKibben, Lima, Ohio 45801, Allen County.

20 Q Okay. And the date of death?

21 A Date of death is 2-23-09.

22 Q Okay. Now, let me get to something here. You have a time of death;
23 right?

1 A Yes.

2 Q How do you determine -- how do you come upon the time of death?

3 As you've explained it, people come to you and they're already deceased.

4 So, how do you go about determining the time of death?

5 A The time of death in this case was something which was reported to
6 our office from Allen County Coroner's Office.

7 Q Okay. Also, you have on there the time of injury also on your case
8 summary report.

9 A Yes.

10 Q Is that also something that's reported to you from the Allen County
11 Coroner's Office?

12 A Yes.

13 Q Let's just be clear - you're from the Lucas County Coroner's Office;
14 correct?

15 A That's correct.

16 Q But, you're getting information from the Allen County Coroner's Office?

17 A Yes.

18 Q Can you explain, if you know, the relationship between the Allen
19 County Coroner's Office and the Lucas County Coroner's Office?

20 A Yes. Lucas County Coroner's Office is one of the larger forensic
21 pathology hubs, so to speak, in terms of we cater to about eighteen northwest
22 Ohio counties. So, all the natural deaths which are happening in all eighteen
23 northwest Ohio counties, including Allen County, all those cases are brought

1 to the Lucas County Coroner's Office to determine, or, to basically do
2 autopsies and determine cause of death.

3 Q Okay. So, in other words, there's a professional relationship between
4 Allen County and Lucas County and the Lucas County Coroner's Office does
5 the autopsies for deaths that happen here in Allen County?

6 A Yes.

7 Q All right. Now, let's talk about the autopsy itself. When Mr. Warrington
8 was presented to you was he clothed or unclothed?

9 A He was clothed.

10 Q Okay. I assume the clothes have to be removed for the autopsy to be
11 performed?

12 A Yes.

13 Q Okay. Did you have an opportunity to look at the clothes during the
14 course of the autopsy? Is that something you generally do?

15 A Yes.

16 Q Now, once the clothes are removed you begin your examination;
17 correct?

18 A That's correct.

19 Q Now, we've touched on it, but can you, in general terms, explain Mr.
20 Warrington's injuries that you found during the autopsy? Let's start
21 specifically with the gunshot wounds.

22 A Okay.

23 Q Can you go ahead and explain those?

1 A Oh, should I go ahead? Okay. Yes.

2 Q Yea, go ahead and explain those.

3 A Mr. Warrington had multiple gunshot wounds. Basically my
4 examination did actually start before the clothes were removed because I was
5 examining how he was. Most of his clothes were blood soaked because of
6 the injuries. Once we removed the clothes we identified there were six
7 gunshot wounds on Mr. Warrington. They were located on the chin, the right
8 forearm, on the left chest, two in the back, and the right buttock. So that is, I
9 think I've got one, two, three, four, five and six on the back. All these wounds
10 had exit wounds associated with them. So, there was a total of twelve holes
11 on Mr. Warrington.

12 Q Are you familiar with the term through and through when talking about
13 gunshot wounds?

14 A Yes.

15 Q Okay. What does that mean?

16 A That means that all the gunshot wounds were exited. So, there was an
17 entrance and it went through the body and came out on the other side.

18 Q Were all of these gunshot wounds to Mr. Warrington through and
19 through?

20 A Yes.

21 Q Were you able to recover any projectile from the autopsy?

22 A No.

23 Q So, although he had six entrance wounds, how many exit wounds

1 would he have?

2 A He had six exit wounds.

3 Q Okay. So, a total of, if you're counting all the wounds, a total of twelve
4 gunshot wounds?

5 A Yes.

6 Q Six entrance and six exit?

7 A Yes.

8 Q Now, we've talked about the blunt force trauma. The blunt force
9 trauma you observed, again, was to the left side of the head and to both legs?

10 A Yes.

11 Q Was that, taking into account the gunshot wounds and the blunt force
12 trauma, were there any other injuries that you noted to Mr. Warrington?

13 A No other significant injuries.

14 Q Okay. I'm going to hand you now what has -- well, let's finish with that.
15 I'll hand you a series of pictures. They are State's exhibits '80', -- well, they
16 should be '80' through '94'. Now, I'm going to hand you these in one stack.
17 I'm going to ask you to take a look at them and then when you're done taking
18 a look at them just give me a head nod and I'll ask you some questions about
19 them. Okay?

20 A Okay.

21 (WHEREUPON, witness reviewed photographs.)

22 A Okay.

23 Q I moved on you; didn't I?

1 A Yes.

2 Q Okay. I'm going to move my base of operation to over here so that I
3 have access to this Doar machine and I'm not walking back and forth
4 constantly. Now, you've had an opportunity to take a look at those exhibits?

5 A Yes.

6 Q Can you tell us generally what those exhibits are?

7 A Exhibit '80' through exhibit '94', they are all post-mortem, or, autopsy
8 photographs of Kenneth Warrington as he was and as it was documented at
9 the time of autopsy at the Lucas County Coroner's Office.

10 Q Okay. Those photographs you mentioned that you take during the
11 autopsy, are those made a part of your report?

12 A Yes.

13 Q And that would be the case in Mr. Warrington's situation as well?

14 A Yes.

15 Q So, the exhibits that I've handed to you, are those all of the
16 photographs you took during the autopsy?

17 A No. They're just some of the photographs.

18 Q Okay. Now, I handed you earlier your complete report. Are the other
19 photographs attached to the report?

20 A Yes.

21 Q Okay. So, what we're going to look at here is a sampling of the
22 photographs you took; is that correct?

23 A Yes.

1 Q Do all of them truly and accurately depict Mr. Warrington's body at the
2 time you took those photographs?

3 A Yes.

4 MR. MILLER: One second, your Honor.

5 THE COURT: Okay.

6 (WHEREUPON, Court went off the record briefly.)

7 Q Okay. Now, Doctor Pandey, what I would like to do - you've described
8 these exhibits in general terms - but, what I would like to do is go through
9 them one by one and have you explain what we're looking at in each picture
10 and how it relates and why it's important to Mr. Warrington's autopsy. Okay?

11 A Okay.

12 Q I will now present State's exhibit '80'. I apologize if I'm in anybody's
13 way. I'm going to try to stay out of the way. What are we looking at here in
14 State's exhibit '80'? Just give me a second here to get this adjusted. What
15 are we looking at here in State's exhibit '80'?

16 A Exhibit '80' is a photograph of Kenneth Warrington as he arrived at our
17 Lucas County Coroner's Office. This is when the body bag was removed.
18 You can see him all blood stained and blood soaked. His jacket is over his
19 head. You can see a t-shirt and you can see a lot of blood on him.

20 Q That's the upper portion of his body?

21 A Yes.

22 Q State's exhibit '81'? What are we looking at in State's exhibit '81'?

23 A Exhibit '81' is the lower portion of Kenneth Warrington when we

1 removed the bag. This is how he presented to us. You can see his shoes
2 and you can also see on his right ankle an identification band which is labeled
3 by the Allen County Coroner identifying him as Kenneth Warrington. You can
4 see he's wearing a set of black pants. That's it. You can see some blood
5 there as well.

6 Q Okay. Taking into account together State's exhibit '81', I'm sorry, '80'
7 and '81', they depict how Mr. Warrington would have been presented to you;
8 is that correct?

9 A Yes.

10 Q Prior to performing the autopsy?

11 A Yes.

12 Q All right. State's exhibit '82'. Can you tell us what State's exhibit '82'
13 is?

14 A Exhibit '82' is a photograph of Kenneth Warrington after we removed
15 his clothes and cleaned him up to better examine his body and to document
16 injuries. Here you can see the top portion of Kenneth Warrington. Actually
17 you can even see that there is a little darkness on the right forehead, if you
18 can see that. That's the contusion/abrasion he had, scraping of the skin.
19 Right there.

20 Q Okay. So, we're working through the process now, are we not? He's
21 presented to you clothed and you have to unclothe the body and begin the
22 process of the examination; correct?

23 A Yes.

1 Q We're moving through that process step by step?

2 A Yes.

3 Q Now, State's exhibit '83'. State's exhibit '83'. What are we looking at
4 here?

5 A Exhibit '83' is the unclothed lower portion of Kenneth Warrington. Here
6 you can see that there's an identification band on the right ankle, as well as
7 on this photograph there's some darker areas on both knees and on the legs.
8 Those are presenting the blunt force trauma, basically the injuries to his leg
9 and knees.

10 Q Okay. And, again, continuing through the process here?

11 A Yes.

12 Q State's exhibit '84'. It doesn't show up real great. Okay. What are we
13 looking at here?

14 A Exhibit '84' is a zoomed in photograph of Kenneth Warrington's legs to
15 identify, to better see and document his injuries. So, here you can see darker
16 areas on his right leg and the left leg. Basically they're presented -- well, I
17 don't know if I can use this probe.

18 Q Sure. Absolutely.

19 THE COURT: Would you rather have a
20 laser pointer?

21 A Yes. Here you can see in the middle of the photograph, towards, or,
22 on the right side of the leg. This is the darker area that's signifying injury and
23 then there's another darker area on the left knee in the photograph signifying

1 injury. There is something else here, but it's not coming out very clearly on
2 the photograph, but there were injuries to his leg and knees.

3 Q State's exhibit '85'. Again, Doctor, as you go through the autopsy you
4 document injuries; right?

5 A Yes.

6 Q We're starting that process now, it appears to me. Is that correct?

7 A Yes.

8 Q In terms of what we're looking at in the pictures?

9 A Yes.

10 Q Now, you have on this State's exhibit '85' labels.

11 A Yes.

12 Q Well, what I call labels. They have letters on them.

13 A That's correct.

14 Q Okay. What are those?

15 A Anytime when we have more than a few injuries and they're in different
16 parts of the body we identify them with letters and we put labels next to the
17 injury, for instance, in this case, gunshot wounds for a description and for the
18 report of the autopsy it's easier to keep it all straight and it's easier to describe
19 also to another person that these are the injuries which he had.

20 Q Okay. Now, when you begin to document your injuries on a body do
21 you start in one area of the body in particular, according to your method?

22 A Yes. We will just basically start from one end to the other end and
23 encompass the entire body. So, I usually start from the head and neck.

1 Q So, you start at the head and neck and work which direction?

2 A Going towards the legs. However, it also depends on where the
3 injuries are more clustered. But, it's mostly like even for description purposes
4 the head and neck and then we go to the chest area and then the extremities.

5 Q In fact, isn't it true that your report follows that sort of method? It starts
6 with the head and neck and then you work your way down describing the
7 injuries and working your way down the body and that's how your report is
8 written; isn't that correct?

9 A Yes.

10 Q Okay. So, let me ask you something about these labels, as I call them,
11 that have letters on them. Are you suggesting in any way with the sequence
12 of these letters, and we're talking about all the gunshot wounds, the sequence
13 of gunshots?

14 A No.

15 Q No? Okay. I just wanted to make that clear.

16 A Yes.

17 Q You're not suggesting, for example, we're going to see a label with A
18 on it, and you're not suggesting that that's the first gunshot?

19 A No.

20 Q Okay. I just wanted to make that clear. That just happens to be what -
21 the first injury that you document during the course of your autopsy?

22 A That would be just the injury which was easier to place an A on at the
23 time. For instance, in this case I believe the A is on the back. So, when the

1 body is turned, well, that's the part that you don't keep seeing again and
2 again. So, you want to identify that immediately and get photographs
3 because once the body is back, again, on the back then you can't see the
4 back again. So, that's the reason they were given the earlier letters.

5 Q Okay. I just didn't want any confusion about, you know, well, any
6 suggestion about the sequence of gunshots. It's really more for your process.
7 The sequence of the labels are more connected to your process?

8 A Yes. It's all more for documentation.

9 Q Okay. Very good. Okay. Let's go back to State's exhibit '85'. What
10 are we looking at here?

11 A Exhibit '85' is, once again, the top portion, the top half of Kenneth
12 Warrington after he is unclothed. Here you can see that there are three
13 letters and one of the letters is identified as G on the left chest. This one.
14 This is a gunshot wound. This is the exit gunshot wound. Then we have a
15 letter which is -- well, I can't really read this one. But, it's signifying the injury
16 over here. That's a gunshot wound to the chin as well as a letter which is
17 labeled as J. There is an exit over here. You can't really see it very well.
18 But, it's right next to J. So, we've got three gunshot wounds here.

19 Q Okay. Okay. We will talk about these in a little bit, how these wounds
20 correspond to each other. But, for our purposes now we're just moving
21 through the examination and you're labeling these particular wounds; is that
22 correct?

23 A Yes.

1 Q Okay. As we look at this picture, as we stand or sit and look at this
2 picture, the head of Mr. Warrington is to the left?

3 A Yes. It's turned towards the left side.

4 Q So, just for reference sake, letter J, what part of the body is letter J on?

5 A Letter J is on the right neck.

6 Q Okay.

7 A The right side of the neck.

8 Q It gives us some scale. Okay. Now I'm going to show you what has
9 been marked as State's exhibit '86'. What are we looking at here in State's
10 exhibit '86'?

11 A Exhibit '86' you can see Kenneth Warrington's lower portion of his
12 face, from the right side, and the neck area. You can also see a scale with
13 the number A147-09. That's our autopsy number which was assigned to
14 Kenneth Warrington. That just means that it's the hundred and forty-seventh
15 autopsy of that year. So, here you can see on the neck that there is a metal
16 probe which is going through Kenneth Warrington's neck. This is actually
17 giving you the direction of the gunshot wound. So, this was a through and
18 through gunshot wound and so here we can see there was an entrance here
19 on the chin and the probe goes through that and it went through the inside
20 and it comes out. So, that means that this entrance is connected to the exit
21 over here. It is also at the same time telling you that it is going from the right
22 side. Basically it's coming from the left side of the chin towards the right side
23 of the neck and is going downward and front to back. So, that is basically

1 documenting the direction and the path of Kenneth Warrington's gunshot
2 wound on the chin and the right side of the neck.

3 Q Okay. Now, you've described that injury - where it entered, where the
4 projectile entered, where it exited, and generally the path. Is that injury
5 consistent with someone sort of tilting their head to the right and back, thus
6 exposing their chin?

7 A Yea, that injury is basically consistent with the chin being exposed -
8 whether there in the back or not. But, it's like the chin has to be exposed for
9 that injury to happen. The bullet has to hit at an angle to be able to go
10 because the entrance wound had an abrasion, basically a scraping, on the
11 top portion. So, this is how the projectile entered. So, for it to enter the body
12 would have to be in a certain way. So, depending on what it was, it entered
13 and it exited out on the right side of the neck.

14 Q So, the chin would have to be exposed?

15 A Yes.

16 Q Is it consistent with sort of to the right and chin up type position? I'm
17 not saying, or, I'm not asking you if that's exactly how this happened. I'm just
18 asking you is that injury consistent with that position?

19 A It could happen like that also; yes.

20 Q State's exhibit '87'. I think here, Doctor, you'll be able to tell what letter
21 that was that you couldn't quite read on the last one because of the angle.
22 State's exhibit '87'. What are we looking at here with State's exhibit '87'?

23 A Exhibit '87' is Kenneth Warrington's top half. Here you can see

1 Kenneth Warrington from his left side. So, you see the lower portion of his
2 chin on the photograph. There's a letter which is labeled as I. Here you can
3 see the gunshot wound to the chin. You can see how it's round. I'm not sure
4 how clearly it's coming; but, it is round here. That's how we know it's an
5 entrance. As we go down to the chest we can see that there is a letter G,
6 which we had seen previously. This is another -- it's a little irregular. This is
7 another gunshot wound. Here we see another gunshot wound. This is letter
8 H. This is on the left chest, the left lateral chest, near the left axillar. So,
9 under the armpit. So, this is designated letter H. This is also a little round.
10 So, this is an entrance wound to the left chest. It goes -- this connects -- you
11 know, we made the Y shaped incision and we saw that it was connecting with
12 G. So, this is how this gunshot wound was going - from H to G, from left
13 chest, left lateral chest, basically left axillary area, under the armpit, going
14 towards the left nipple and into the center of the left chest. This was going
15 from left to right, downward, and this one was going back to front.

16 Q Okay. Is that injury consistent with somebody having their left arm
17 raised?

18 A That injury is consistent with basically the arm being in an open
19 position because that area has to be exposed for the bullet to enter.

20 Q Okay. By open position --

21 A It could be any way, but basically it just has to be open.

22 Q Raised up? Okay. Like, okay, with the elbow out, so to speak?

23 A Yes.

1 Q Okay. Now, State's exhibit '88'. Here is I think where you were talking
2 about the letter A. What are we looking at on State's exhibit '88'?

3 A Exhibit '88' is Kenneth Warrington's photograph of his lower half of his
4 torso. You can see that there's another placard there which is designated
5 with A147-09. That's, once again, our autopsy number designated to
6 Kenneth Warrington. As I move this laser pointer you can see that this is
7 letter A which is next to a round injury, which is an entrance gunshot wound.
8 Then there's another letter, B, which is also next to a round injury, which is
9 another entrance wound. You can see those like more towards the midline,
10 the middle, the letter B. This is more towards the outside and to the left of
11 Kenneth Warrington's back. Here you can see this is the buttocks over here
12 and you can see that this is the top. This would be what is termed as right
13 side of Kenneth Warrington, top portion of the photograph. The lower portion
14 is the left side of Kenneth Warrington.

15 Q So, we're looking at his lower back at this point?

16 A Yes.

17 Q Okay. State's exhibit '89'. You can see all the labels. State's exhibit
18 '89'. What are we looking at here?

19 A This is Kenneth Warrington. Again, exhibit '89' is Kenneth
20 Warrington's photograph from the right side of his body. This is what I call,
21 well, it's a side view in which you can see the top portion. You can see the
22 lower half of the chin, as well as the letter J, which was the right side, the right
23 neck exit wound, gunshot wound. Here you can see that there is two letters

1 here. I actually can't read them from this far away.

2 Q We'll get to them on the next picture, I think.

3 A Okay. But, these are two letters which are designated to the exit
4 wounds. You can see that there is bruising around the exit wounds. There's
5 another letter here, which is another gunshot wound. So, we have in this
6 photograph one, two, three, four gunshot wounds, plus another, well, you can
7 see a letter here which is designating that gunshot wound to the middle of the
8 chest. Remember that one which was going from under the armpit towards
9 the middle of the chest? So, that's that wound right here.

10 Q Okay. So, now, again, we're working our way down the body; right?

11 A Yes.

12 Q We're looking at the back. Now, you know, we're in the midsection of
13 the body and we're looking at the back and now we've turned him and looking
14 somewhat at the front.

15 A And the right side.

16 Q And the right side. I'll ask you if you're able to read those labels in
17 State's exhibit '90'. State's exhibit '90'. What are we looking at here?

18 A Exhibit '90' is the two abdominal wounds we had seen in the last
19 photograph. These are the zoomed in versions basically to identify the
20 photographs better and the wounds better. This is designated with letter E,
21 which is corresponding to an exit wound, and the letter F, which is
22 corresponding to an exit wound. So, we have two gunshot wounds to the
23 right lower aspect of Kenneth Warrington's abdomen.

1 Q Okay. So, in fact, we have two on the back, labels A and B, I believe
2 they were, and we have two entrance wounds.

3 A Yes.

4 Q And now on the front in the abdomen area we have two exit wounds; is
5 that correct?

6 A Yes.

7 Q Are A and B in any way connected to E and F?

8 A Yes.

9 Q How are they connected?

10 A They are connected by basically once we did the reflection of the skin
11 inside we could see how the path was going in terms of noticing, you know,
12 where the hemorrhage is and how all the organs are getting connected. I'm
13 going to have to reference to the report to be absolutely sure which one was
14 matching with which letter. Okay. Letter A, which we had seen in the back
15 which was towards the left side of the lower back and it went through the skin,
16 soft tissue, muscles of the left back, and we could see as we had opened up
17 the body that it then hit one of the organs, the adrenal gland, and the left
18 kidney was also hit in this one, and the aorta, which is one of the major
19 vessels in the abdomen, that was hit, as well as it came out on the anterior
20 abdominal wall and the wound, which it corresponded, the exit wound is
21 designated with letter F. So, it's more towards the center. This is letter F,
22 which is corresponding with letter A on the back. The back is the lateral side.
23 This one was going left to right, and back to front. This one was actually

1 associated with a lot of blood in his abdomen.

2 For letter E, that was connecting with letter B on the back. That was
3 on the right side of the back. Basically that was the midline back. We had
4 seen there were two wounds - one was more outside and one was more
5 inside. So, this was more in the midline, letter B. This corresponded -- this
6 went through skin, soft tissue, muscles of right side of back. This one was
7 actually hitting muscles and soft tissues and the back muscles, the mesentery
8 again, and exited out to letter E. So, B was with E and A was to F.

9 Q Okay. State's exhibit '91'. Again, your process is to go from head to
10 lower body as you make your examination; correct?

11 A Yes.

12 Q Okay. State's exhibit '91'. What are we looking at here?

13 A Okay. Exhibit '91', once again, you can see our autopsy placard. This
14 is a photograph of Kenneth Warrington's right thigh. Basically you can see
15 the curvature of your abdomen, you know, the lower portion. This is the right
16 side. The top portion of the photograph is the right side of Kenneth
17 Warrington. It comes down into the buttocks and they will curve out. So,
18 here you can see that. Then the legs come on down there. Here you can
19 see the genital area as well. So, we had Kenneth Warrington on his side and
20 here we identified and basically have labeled two gunshot wounds. One is
21 labeled letter C and the other is D. This gunshot wound is the entrance. So,
22 letter C is the entrance. You can see it's more round. This is more bigger.
23 These are both connected. When you put a probe through them they were

1 actually connecting. These were going through the skin and underlying soft
2 tissue. So, entrance and exit. So, we can see two gunshot wounds here.

3 Q Is that kind of on the right buttocks?

4 A Right buttocks and upper right thigh.

5 Q Okay. State's exhibit '92'. Now, we've moved down the body. But,
6 you also examined the extremities; correct?

7 A Yes.

8 Q Okay. State's exhibit '92' -- well, being what, the arms and legs?

9 A Arms and legs; yes.

10 Q State's exhibit '92'. What are we looking at in State's exhibit '92'?

11 A Exhibit '92' is Kenneth Warrington on his back. Here you can see,
12 well, the lower portion of the photograph shows you a portion of his face and
13 his right ear. This is the right shoulder. The whole hand has been, the arm,
14 has been lifted up to better document his injury. This is the right elbow. It
15 keeps going up and here you see a placard with our autopsy number and you
16 see two holes. One is on the thumb side and one is on the little finger side.
17 So, this is the thumb side. This is the entrance, one entrance wound, and this
18 is the exit. They were both connected. We know that because once we did
19 the x-ray and we put the probe in they were both connected wounds. So,
20 entrance and exit wounds.

21 Q Okay. Now, you mentioned the thumb side and the pinkie side.

22 A Yes.

23 Q The thumb side, is that where the entrance wound was?

1 A Yes.

2 Q And the pinkie side was where the exit wound was?

3 A Yes.

4 Q State's exhibit '93'. What are we looking at in State's exhibit '93'?

5 A Exhibit '93' is, once again, Kenneth Warrington's right forearm. So,
6 here you can -- and this is a zoomed in version of the previous photograph to
7 better document the injuries. Here you can see our placard, which is resting
8 on his right elbow. You can see the letter K and the letter L. So, these are
9 designated with letters K and L. So, this is the entrance, which is the thumb
10 side, and this is the exit, which is the little finger side.

11 Q Okay. State's exhibit '94'. What are we looking at in State's exhibit
12 '94'?

13 A Exhibit '94' is the x-ray of Kenneth Warrington. We do all the x-rays for
14 the gunshot wounds to see if there's any kind of projectile or any kind of
15 trauma. So, in this case you can see that there's a fracture of one of his
16 forearm, the upper right upper extremity, bone. So, that fractured as a result
17 of the gunshot wound and was going through the soft tissue and fractured the
18 bone and exited out.

19 Q So, in my lay terms, that's a broken forearm due to this gunshot wound
20 we just discussed with L and K, labels L and K; correct?

21 A Yes.

22 Q Okay. Now, we have talked about a lot of injuries here. I'm going to
23 hand you what has been marked as State's exhibit '95'. Will you explain what

1 that is?

2 A Exhibit '95' is a summary of the gunshot wounds. This was reviewed
3 by me at the Lucas County Coroner's Office prior to preparation for this case.
4 It's for Kenneth Warrington, with autopsy number 147-09 in 2009.

5 Q You've had an opportunity to review that?

6 A Yes.

7 Q Does that truly and accurately depict, or summarize, if you will, the
8 gunshot wounds that Mr. Warrington suffered?

9 A Yes. It's an accurate summary of the multiple gunshot wounds which
10 Kenneth Warrington had got.

11 Q Does it accurately depict, or summarize, the gunshot wounds that you
12 explained in your report connected to Mr. Warrington's autopsy?

13 A Yes.

14 Q I'll just publish this now. Let's just take by way of example, well, you
15 can see here we have the letters, and I guess as we look at it it's the left hand
16 column and those letters correspond with your labels that you reference in
17 your report?

18 A And on the body; yes.

19 Q And on the body. Then what's the next column to the right?

20 A That's entrance or exit.

21 Q Okay. Then area of the body?

22 A And the location of the wounds. So, area of the body.

23 Q And then the wound direction; is that correct?

1 A That's correct.

2 Q Okay. We won't go through each one. But, this is a summary of your
3 findings?

4 A Yes.

5 MR. MILLER: One second, your Honor.

6 THE COURT: Okay.

7 (WHEREUPON, Court went off the record briefly.)

8 Q Now, as you mentioned, or I think you've already mentioned, all these
9 gunshot wounds go through and through?

10 A Yes.

11 Q And you did not recover any projectiles at the autopsy?

12 A No.

13 Q Of these gunshot wounds -- well, let's just talk about all of the injuries.
14 I mean, there was some blunt force trauma to the body; correct?

15 A Yes.

16 Q In reference to all of the injuries to the body which ones, in your
17 opinion, were fatal; if any?

18 A In my opinion all of them because that's the reason it's determined as
19 multiple gunshot wounds.

20 Q Okay. The blunt force trauma injuries would not be fatal; would they?

21 A No.

22 Q But, in reference to the gunshot wounds all of them would be fatal?

23 A Yes.

1 Q I mean, is it true that really any gunshot wound can be fatal?

2 A That's correct.

3 Q Did you have an opportunity to examine, -- I think I already asked you
4 this and I think you stated earlier that you had the opportunity to examine the
5 clothing that Mr. Warrington was wearing prior to, or, when he was presented
6 to you?

7 A Yes.

8 Q Did the holes -- did you examine the holes in the clothing?

9 A Yes.

10 Q I should have asked you - were there holes in the clothing?

11 A Yes.

12 Q Okay. You had an opportunity to examine those holes?

13 A Yes, I did.

14 Q Did they correspond with the injuries?

15 A They did.

16 Q And when I say injuries I mean gunshot wounds.

17 A Yes.

18 Q Was that noted in your report?

19 A It is.

20 Q Now, the blunt force trauma that we've talked about, I'm going to use
21 the word scrapes; okay? I don't know whether they were scrapes. But, the
22 blunt force trauma, the scrapes, that are noted in your report and we see in
23 the pictures could you determine during your autopsy whether or not those

1 were old or new injuries? Could you make any kind of determination in that
2 regard?

3 A Yes.

4 Q What was your determination?

5 A They were all red and they were all newer injuries in terms of they
6 happened at the same time as the gunshot wounds, and especially the
7 forehead because underlying the forehead when we removed the scalp there
8 was what is termed a subgaleal. There was an injury to inside of the scalp
9 also. There was red and bleeding which was associated with it. It's all fresh
10 injuries.

11 Q Okay. Just to summarize, the cause of death was multiple gunshot
12 wounds?

13 A Yes.

14 Q Manner of death was homicide?

15 A Yes.

16 Q Shot by another person?

17 A That's correct.

18 MR. MILLER: One second, your Honor.

19 (WHEREUPON, Court went off the record briefly.)

20 MR. MILLER: I have no further questions.

21 THE COURT: Okay. Any questions, Mr.
22 Rion?

23 MR. RION: Just a few, your Honor. Thank

1 you.

2

CROSS EXAMINATION

3 **BY MR. RION:**

4 Q Good morning.

5 A Morning.

6 Q I just have a few questions. You said that there were -- I heard you
7 say two basic areas where there was what you referred to as blunt force
8 trauma; correct?

9 A Yes.

10 Q On the forehead. Was it the left side of the forehead?

11 A Yes.

12 Q And then also was it the left leg?

13 A On legs and knees.

14 Q Okay. Do you have an opinion as to whether or not those injuries were
15 the result of a struggle or simply the result of falling after being shot?

16 A I can't say how it happened, but I can say that it happened when the
17 person hit something. Basically his skin hit an area. That's on the larger
18 area. So, he probably fell.

19 Q Okay. So, the blunt force trauma to the forehead and to the legs would
20 be consistent with somebody falling?

21 A Yes.

22 Q And there's nothing that you saw in those injuries that would be
23 consistent with somebody having a struggle?

1 A No.

2 Q Okay. Second, do you know what the term stippling and gun powder --
3 well, let's deal with stippling. What is stippling?

4 A Stippling is the presence of injury around a gunshot wound which
5 happens because of the gun powder, which injures it. So, it happens when
6 the gun is at a certain range. It's called intermediate range.

7 Q And if the gun is right next to the person would there be evidence that
8 you would expect to find on the body if the barrel of the weapon was very
9 close to the person?

10 A Yes.

11 Q And were any of those findings found?

12 A No. There was no soot or stippling on either of the gunshot wounds.

13 Q So, from that can you tell that the gun was some distance away from
14 the body?

15 A Yes.

16 Q And how far no one knows. But, we know that it would be likely maybe
17 outside of two to four feet? Is that fair?

18 A Basically a gun, how far it is, I would not be able to say because if
19 there is no soot or stippling, well, that is the only thing I could say that it is
20 near to the body. However, you have to also understand that the person is
21 wearing clothes and we may not necessarily see those unless they're really
22 close, maybe, like if it's right on the body then we could probably see the soot

1 traveling into the gunshot wound. But, if they are closer stippling may not
2 happen on the body if there is clothes or anything.

3 Q Maybe you could see evidence then on the clothing. You didn't see
4 any evidence on the clothing of any type of gunshot residue or gun powder or
5 burning of the clothes or anything like that; correct?

6 A I can't make that out because normally you don't see with the naked
7 eye. You either have to check for it or because it was all blood soaked we
8 couldn't see anything.

9 Q So, you have no information to say that it was there; correct?

10 A No, I don't have any information.

11 Q Okay. And as it relates to the wound to the neck area, you didn't see
12 any type of evidence of a close shot wound with that injury; correct?

13 A Yea, that was not a close shot.

14 Q The only other thing, and some of the jurors may not have seen people
15 that are deceased before but, for instance, there were a lot of markings, like
16 on the back. Around the wounds there were, you know, fairly large areas of
17 redness. Someone could think that that was a bruise or something like that.
18 What was the cause of the discoloration of the body other than the wounds
19 themselves?

20 A The discoloration, basically it's red or purple, and it happens when the
21 blood pools on the dependent part. It's called lividity. So, that's what we see
22 in dead bodies especially if they were laying for a certain time. They can
23 either blanch or not blanch. In this case we had pooling of blood on the back.

1 Q Okay. So, that shouldn't be confused as bruising or any type of blunt
2 force trauma, as you've called it; correct?

3 A That's correct.

4 Q So, the only injuries were the ones that you identified to the
5 prosecutor?

6 A Yes.

7 Q Thank you for your time.

8 A Thank you.

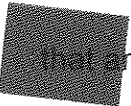
9 THE COURT: Any redirect?

10 MR. MILLER: Just very briefly, your

11 Honor.

12 **REDIRECT EXAMINATION**

13 **BY MR. MILLER:**

14 Q Doctor Pandey, these blunt force injuries that you've described and
15  that are noted in your report on the lower extremities, in other words on the
16 legs, are those consistent with somebody hitting rough pavement?

17 A They're just basically consistent with the body hitting a hard surface.

18 Q Okay.

19 MR. MILLER: Nothing further.

20 THE COURT: Okay. Any recross?

21 MR. RION: No, your Honor.

22 THE COURT: All right. Thank you,

23 Doctor. I know you've been here awhile. You're excused.

1 A I'm excused? Thank you.

2 THE COURT: Okay. All right. It's twelve
3 o'clock noon. Let's take our noon recess. Ladies and gentlemen of the jury,
4 you'll be excused for lunch. Again, the same instructions that you not discuss
5 the case among yourselves or with anyone else. Don't pay attention to any
6 media - written, television, or radio. Don't make any communication over the
7 Internet or Facebook. Don't discuss the case with anyone. Don't formulate or
8 express any opinions.

9 Let's reconvene at one o'clock. We'll stand in recess.

10 (WHEREUPON, COURT WAS IN RECESS FOR LUNCH BREAK.)

11

12 THE COURT: Okay. We're reconvening
13 this 9-11-2015 with Case Number CR2014 0139, State of Ohio -vs- Markelus
14 Q. Carter. The defendant is present in Court with counsel. The State is
15 present. The jurors have all returned from the noon recess.

16 We'll continue with the presentation of the State's case. The State
17 may call their next witness.

18 MRS. KOHLRIESER: Thank you, your
19 Honor. The State would call Sergeant Curt Hile.

20 WHEREUPON, called to appear as a witness in this proceeding was one:

21 **SERGEANT CURTIS HILE**

22 who, having been duly sworn by the bailiff herein, testified as follows:

23 THE COURT: Mrs. Kohlrieser, maybe you

1 would want --

2 BAILIFF: He has no objection.

3 THE COURT: -- to get these exhibits.

4 MRS. KOHLRIESER: Oh, I'm sorry.

5 THE COURT: Have a seat. Okay.

6 Whenever you're ready.

7 MRS. KOHLRIESER: Thank you, your

8 Honor.

9 **DIRECT EXAMINATION**

10 **BY MRS. KOHLRIESER:**

11 Q Would you state your name for the record?

12 A It's Curtis, C-U-R-T-I-S, and the last name is Hile, H-I-L-E.

13 Q Okay. And although I can see your uniform, for the record would you
14 tell us where you're employed?

15 A Lima, Ohio Police Department.

16 Q And how long have you been with the Lima Police Department?

17 A Oh, about thirteen years or so. I worked at another agency shortly
18 before that, too. So, about fourteen years as a police officer.

19 Q You were actually with the parks department, I believe?

20 A Yes. Yep.

21 Q And what is your, and you might have said, I apologize, your current
22 position?

23 A I'm a patrol Sergeant.

1 Q What does a patrol Sergeant do?

2 A You're assigned to a shift and you supervise the operations of that
3 shift.

4 Q So, if, say, you're in charge of the shift today and a homicide occurs
5 would you be who the street cops call?

6 A I would be the on duty supervisor and the on scene supervisor until an
7 investigator arrived; yes.

8 Q Okay. When did you get promoted to Sergeant; if you remember?

9 A I believe about four years ago. I think it was about September of 2011.

10 Q Prior to that time were you a routine patrol officer?

11 A That was it. A patrol officer; yes.

12 Q And were you in the position as a patrol officer on February 23rd of
13 2009?

14 A Yes, I was.

15 Q And were you working that day?

16 A Yes.

17 Q And what shift were you working at that time?

18 A I believe I was on third shift - twenty-three hundred to oh seven
19 hundred. So, eleven P.M. to seven A.M.

20 Q Thank you. I was just about to ask for the non-military time. Around
21 six thirty-nine that morning did you respond to a call at 436 East McKibben?

22 A Yes, I did.

23 Q What did you observe when you arrived?

1 A We got a call, a man down call. We arrived on the scene. We found a
2 man on the west side of the house by a side door, on a sidewalk. He was
3 obviously deceased.

4 Q All right. Do you know whether anyone was home at that time?

5 A We immediately arrived to the house and we later discovered that
6 there were some people inside the house; yes.

7 Q Do you remember, well, if not their names, but how many and whether
8 they were male or female?

9 A I believe there were three people there - two females and a young
10 male. I believe there were three people there.

11 Q At the February 23rd homicide incident?

12 A At the homicide incident I thought there were three people there; yea.

13 Q Okay.

14 A I believe there were two children and a mother, if I remember.

15 Q Okay. Could you be wrong about that?

16 A I could be. I could be; yes.

17 Q Okay. But, there were civilians there?

18 A There were people there; yea. Absolutely.

19 Q All right. Now, the mom there, did you recognize her at all?

20 A Initially I did not.

21 Q And at some point while you were there at McKibben on February 23rd
22 of '09 did you enter the kitchen area of the home?

23 A Yes, I did.

1 Q And was there anything in the kitchen area that caught your eye?

2 A There was a utility bill laying on a, well, I guess for lack of a better
3 word, like a bar area or a kitchen counter. It was out in obvious view. It had
4 Markelus Carter's name on it.

5 Q Okay. I'm going to show you what's been previously marked State's
6 exhibit '7'. I'd ask you if you recognize what's depicted in that photo.

7 A Yes. Yep.

8 Q And what is that?

9 A That's an electric bill from American Electric Power with Mark Carter's
10 name.

11 Q Does it also have an address on it?

12 A Yes, it did.

13 Q What address was that?

14 A It was the East Eureka Street. 102 East Eureka, I believe it was. 122
15 East Eureka.

16 Q Okay. Now, when you saw this bill sitting there why did that catch your
17 eye?

18 A Well, I thought the female that was at the house looked familiar and I
19 didn't really know why. But, when I saw the bill and the address I
20 remembered an incident from a couple of years prior that the female I'm
21 speaking of, Burkholder, was involved in the incident with Mark Carter on that
22 East Eureka Street address.

23 Q Okay. So, when you saw the name Mark Carter and you saw the 122

1 East Eureka --

2 A Bells went off in my head that that's who this lady is.

3 Q Okay.

4 A I just couldn't put it together until, -- and then that's what rang in my
5 head and I said, 'oh, okay, that's where I know her from'.

6 Q And you've had occasions like that before where you see somebody
7 and say --

8 A Oh, absolutely. Yep. Something triggers my mind and I'm like, 'oh,
9 that's where I know you from'.

10 Q Now, you said that December 17th - excuse me - you said
11 approximately two years ago. If I said the date of December 17th, 2007;
12 would that sound correct to you?

13 A Yes.

14 Q All right. If you can, explain to these folks sitting here in the jury box
15 how it was that you were involved in that particular matter back in 2007.

16 A In 2007? I was traveling northbound on Main Street in about the four
17 hundred block of South Main, which is real close to Eureka Street, by the
18 Central Fire Station on South Main Street when I noticed a car behind me
19 flashing their bright headlights. So, I continued and then I eventually pulled
20 over as they were continuing to flash their lights. That's when I came into
21 contact with Sonya Burkholder. She explained to me that there had been an
22 incident between her and Mr. Carter at their residence on East Eureka Street.

23 Q When Sonya Burkholder -- well, I guess when you stopped and

1 actually engaged with the person who was flashing their lights at you you said
2 that was Sonya Burkholder?

3 A Yes.

4 Q And how would you describe the way she approached you and her
5 demeanor?

6 A She was animated, concerned, and obviously glad to see a police
7 officer because she needed help.

8 Q Was she upset?

9 A She was upset.

10 Q What did she tell you -- what did she explain to you was why she
11 needed help?

12 A She explained to me that she and Mark had gotten into a fight at the
13 house. During that fight he had some kind of hand gun and that he had hit
14 her and that the kids were still inside the house and she was concerned for
15 their safety.

16 Q Okay. Do you remember about what time of night or early morning this
17 was?

18 A Well, I want to say approximately three A.M.

19 Q If I showed you your report would that refresh your recollection as to
20 that time?

21 A Yes, it would.

22 Q Is that something that you note on your report?

23 A Yes. Yes.

1 Q So you're not left guessing?

2 A Absolutely; yea.

3 Q I'll just have you take a look at that. When you get done, let me know.

4 A Okay.

5 (WHEREUPON, witness reviewed document.)

6 A The time is two twenty-five in the morning.

7 Q Okay. So, would that have been when contact was initiated with you?

8 A That's when she would have made contact with me; yes.

9 Q Okay. Now, she said that she had been struck. Did you notice any
10 injuries to her?

11 A I didn't notice any obvious injuries on her; no.

12 Q Okay. When you say obvious, what do you mean by that?

13 A She wasn't -- she wasn't spewing blood anywhere. She didn't look as
14 if she needed immediate medical attention from paramedics.

15 Q Okay. Now, when she tells you about Markelus Carter having this gun,
16 hitting her, and there's two children in the home, what's going through your
17 mind as an officer?

18 A At that point my focus shifts from, well, not to sound unsympathetic to
19 Sonya's situation, but she's safe now. She's with the police. She's safe. My
20 immediate attention and focus shifts to making sure what we have to do to
21 make sure these children are safe inside the house.

22 Q So, I would assume, have you been flagged down by people before?

23 A Sure.

1 Q Flagged down in states of distress?

2 A Yes.

3 Q Have you, in your thirteen years, been called to domestic violence
4 situations?

5 A I'm sorry?

6 Q Have you been called to domestic violence situations in your thirteen
7 years as an officer?

8 A Multiple.

9 Q When you have an issue like this -- let me ask you this - once she tells
10 you this what is your response?

11 A Well, I immediately start trying to gather more information about what's
12 going on inside the house, how old the children are, more details about the
13 incident so we can gather as much information as we can before we
14 approach his house to try to make contact with Mr. Carter.

15 Q Okay. Now, when you say 'we', was there any other officer with you at
16 that time?

17 A Not when I was initially talking to her; no. But, other officers responded
18 to the scene when I put out that call.

19 Q So, you put out a call of what?

20 A I put out a call of exactly what had happened - that I had been flagged
21 down and there was an alleged domestic violence incident on East Eureka
22 Street. We don't respond to domestic violence situations by ourselves.

23 Q So, that's protocol?

1 A Yes.

2 Q You don't go to a domestic violence alone?

3 A Absolutely.

4 Q Okay. So, you call for back-up?

5 A Sure.

6 Q And do they arrive?

7 A Yes.

8 Q And when they arrive what do you do then?

9 A I explained the situation to them. Then at that point we go to the house
10 to try to get Mr. Carter's side of the story to find out what's going on.

11 Q Okay. Are these other street officers like yourself that are backing you
12 up?

13 A Sure. Yes.

14 Q Okay. Go ahead. So, then did you then approach the home at 122?

15 A We went to the house. Obviously, I mean, we don't just stroll up the
16 front walk and approach the house that we've been told that somebody has a
17 gun inside of. I mean, we approached the house from the sides and tried to
18 observe what's going on inside as much as we can. Keep in mind it's very
19 cold this night.

20 Q Do you recall how many there were of you at this point?

21 A I think there was probably myself and two more. So, three, three
22 officers.

23 Q Okay. Go ahead.

1 A So, we go to the house. We knock on the door. We don't get an
2 answer. We continue to knock. We continue to not get an answer. I know
3 we can't really see much going on inside the house at that point. Keep in
4 mind it's very cold outside. So, that's when we walked away from the house
5 and go back to our patrol cars to determine what we're going to do next.

6 Q Okay. So, once you're getting no response and you go back to your
7 patrol cars what do you guys decide to do?

8 A We call the on-duty supervisor, Sergeant Craig Stevenson, and I
9 explain the situation to him.

10 Q Okay. What was Sergeant Stevenson's order?

11 A Initially I believe we tried to get a key from Sonya for the house so we
12 could go check the welfare and see what was going on inside the house. She
13 told us that no one on the outside had a key. So, I explained that situation to
14 him. I even used her phone to make some phone calls to try to get someone
15 to answer the phone inside the house. I didn't receive any answers on the
16 phone, either.

17 Q Okay. Did she have a number for someone inside the house?

18 A Yes. Yes.

19 Q Okay. Do you remember who that was?

20 A I think it may have been her daughter, Tarah.

21 Q Okay.

22 A Yea.

23 Q But, no one answered?

1 A No one answered the phone.

2 Q Now, once no one is answering and you don't have a key do you relay
3 all this information to Sergeant Stevenson?

4 A Sure. Absolutely.

5 Q Just for the record, Sergeant Stevenson is no longer alive; correct?

6 A Correct.

7 Q So, he can't explain his decisions; correct?

8 A Sure.

9 Q But, nevertheless, he's your supervisor and you have to do what he
10 says?

11 A Yes.

12 Q Okay. So, what does he say?

13 A Obviously he wants me to gather more intelligence about what's inside
14 the house. Are there any more weapons? Are there any animals inside the
15 house? Dogs are typically what we're worried about. The layout inside the
16 house. So, those are the kinds of things that I started to gather from her.

17 Q Let me ask you this - is this somewhat of an unusual situation as far as
18 what's about to happen?

19 A About the resources we were going to call out? It's not common.

20 Q Let me ask you this - she comes to you with this story. You don't see
21 any obvious injuries on her and she's told you that she's been hit. Did that
22 strike you as odd that you didn't see any obvious injury?

23 A No.

1 Q Why not?

2 A It's not uncommon. In all the countless domestic violence situations
3 I've responded to it's not uncommon to see someone who's been struck and
4 you get there immediately after and there's no injuries on them. They may
5 not show up for a few days. They may not show up for a few hours. I can
6 that it's not uncommon because it's not uncommon to have a witness say,
7 'yes, he hit her', or, 'he hit him', or, you know, someone struck someone and
8 you're looking at them and there's no injuries.

9 Q Even sometimes the accused will tell you, 'yea, I hit her'?

10 A Absolutely. They'll say, 'yea, I hit them', and you go over there and
11 there's no injuries on them.

12 Q Now, you count and texted in domestic violence situations, but have
13 you responded to bar fights or similar situations?

14 A Oh, absolutely.

15 Q Same type of thing?

16 A Same kind of situations.

17 Q I see you got a little issue going on under your left eye there.

18 A Yes. I struck myself in the eye with a traffic cone the other day.

19 Q We won't go into those details.

20 A Yea.

21 Q Now, did you markings show up right away?

22 A This happened Sunday evening after the fireworks show. So, probably
23 about ten or ten-thirty. So, this is the remnants from Sunday evening. Really

1 the marks probably didn't really show up until about Tuesday.

2 Q Okay.

3 A Then they were really, really obvious.

4 Q All right. So, was there anything -- again, you're making these phone
5 calls, or, radio calls, or whatever, to your shift supervisor. Is there anything
6 telling you, 'well, I don't know if she's to be believed'?

7 A No. I leaned on her significantly trying to make sure that this was
8 actually what had happened inside because we don't want to make a big deal
9 out of something that's not. So, I definitely leaned on her for quite awhile
10 trying to get more information and she stayed with her story about what had
11 happened inside the house.

12 Q Have you come across situations like that in your thirteen years as a
13 police officer where someone's coming across quite dramatic and after you
14 push them a little bit, well, not so much?

15 A They changed their story. Yes, absolutely.

16 Q But, you weren't getting that vibe?

17 A No.

18 Q Okay. So, tell the jury what happens next.

19 A Next I explained the situation. I continued to explain the situation to
20 Sergeant Stevenson. The other thing that caught my attention that people
21 may still be inside the house was that 122 East Eureka is like three houses
22 from where she saw me. So, she had apparently just left the house, from
23 what I could gather. By the way she was dressed and how cold it was

1 outside, well, I didn't gather that she had been outside for very long. So, I
2 had a good feeling that whatever had happened had just occurred. So, I had
3 a good feeling that there was probably people still inside the house.

4 Q All right. Are you made aware at some point that the hostage
5 negotiation team, along with S.W.A.T., was coming out?

6 A Yes.

7 Q Let me ask you this - as you're doing all of this do you know where
8 Sonya Burkholder is this entire time?

9 A No. I left her at my car down the street probably about a block away.

10 Q Is there a car wash, or, was there a car wash at the time?

11 A There's a car wash at Main and Eureka.

12 Q Okay. Was that --

13 A I believe that's where we staged up at with her.

14 Q All right. At some point did someone take her to the station?

15 A Yes.

16 Q Was that you?

17 A No.

18 Q When I say station I mean the Lima Police Department.

19 A To the Lima Police Department.

20 Q Was there anything about her appearance that struck you that she was
21 drunk and she didn't know what was going on?

22 A No.

1 Q Once, and I'm just going to say H.N.T. for short, is out there what was
2 your role at this point?

3 A At that point we just maintained the perimeter. To explain that better, I
4 had my car parked at Main and Eureka with the overhead red and blue lights
5 on blocking the road so nobody could drive past the scene.

6 Q All right. Now, in your report did you fill in the property portion of it of
7 anything that was seized?

8 A Yes.

9 Q Okay. Eventually this ends; correct?

10 A Yes.

11 Q We've heard from Detective Neidemire. So, I won't go into that in
12 detail with you.

13 A Okay.

14 Q But, once this ended do you know whether officers are able to make
15 entry into the home?

16 A Yea. I wasn't actually -- I didn't actually witness them go into the
17 home. But, from what I could gather from the reports and the debrief
18 afterwards, yes, they made entry into the house.

19 Q Okay. Did someone put you in charge of writing down the property
20 that was found in that home?

21 A Yes.

22 Q Okay. What item was that?

23 A There was a black co2. A co2, like BB gun, a hand gun style gun.

1 Q Okay. If you would read your report would it refresh your recollection
2 as to exactly what that was?

3 A Yes.

4 (WHEREUPON, witness reviewed document.)

5 A It's a Walther CP99 black co2 hand gun.

6 Q Okay. But, again, you did not see that?

7 A I did not see it.

8 Q Let me ask you this - have you, in your thirteen years, come across
9 real guns, co2 guns, and BB guns?

10 A Yes.

11 Q Are there times when just looking at them, without getting too close or
12 touching it, that you could confuse one of those BB guns or air pistols with an
13 actual gun?

14 A Yes. In my job I'm forced to spend my time around a gun. I was
15 recently on a call over the weekend where three young men had BB guns and
16 looking over a fence onto the ground about four feet down I had a hard time
17 telling if that gun was a BB gun or a real gun. It turned out to be a co2 hand
18 gun.

19 Q And you're familiar with guns?

20 A Yes.

21 Q Now, once you -- let's jump back to February 23rd, 2009. Once you
22 see this bill and you make the connection about the incident that you just
23 described what did you do with that information?

1 A I passed it on to one of the investigators at the scene.

2 Q Okay. Do you remember roughly what your words were that you
3 passed on?

4 A I believe I just told him about the incident that I just explained - that I
5 recognized Sonya from the incident that had happened on Eureka Street and
6 that, you know, they had had a, you know, history of being involved in fights.
7 So, that's just all I explained to him.

8 Q Okay. You didn't go into all the details about what the 2007 incident
9 was?

10 A No. No.

11 Q But, just generally?

12 A I just thought it was odd that she was living over there now and it
13 looked like another man was going to be going over there and that she had
14 been with Mark on Eureka Street. I just thought it was odd that his utility bill
15 was at her new house. It just seemed kind of --

16 Q Okay. So, you just passed on what you knew?

17 A Yes.

18 MRS. KOHLRIESER: Just a moment.

19 (WHEREUPON, Court went off the record briefly.)

20 MRS. KOHLRIESER: No further questions
21 at this time.

22 THE COURT: Any questions, Mr. Rion?

23 MR. RION: Thank you, your Honor.

CROSS EXAMINATION

1
2 **BY MR. RION:**

3 Q Good afternoon, sir.

4 A Good afternoon.

5 Q Okay. So, just a couple of things. You have a copy of your report
6 there?

7 A I do not.

8 Q Okay.

9 MRS. KOHLRIESER: I have one here.

10 MR. RION: Thank you.

11 Q If you need to refresh your recollection.

12 A Okay.

13 Q I'd like you to turn to page two. It says page three of three, I guess.

14 A Oh, okay.

15 Q It's page two of --

16 A This one right here, sir?

17 Q Yes, sir.

18 A Okay. All right.

19 Q The last two lines, and I think you stated, but just to -- well, your
20 impressions on that day, on 12-17-07, were, "At that time, or, at the time I
21 spoke with Sonya she did not appear to have any visible injuries."

22 A Correct.

23 Q That's an accurate statement; right?

1 A Yes.

2 Q There was no dried blood on her face?

3 A Not that I was -- not that I witnessed; no.

4 Q There were no scratches on her face?

5 A Not that I recall.

6 Q Okay. You gave a description of what she told you had occurred in
7 that house?

8 A Yes.

9 Q Essentially, if I'm understanding it correctly - and this is on page two
10 obviously for your recollection - it said 'that he punched her on the left side of
11 her face'. That's the allegation that she made at that time; correct?

12 A Yes.

13 Q It doesn't say that he pistol whipped her; right?

14 A No.

15 Q And pistol whipped, for those that, well, I guess that's a slang term, she
16 did not say that he hit her in the face with a pistol.

17 A No, she did not say that.

18 Q Now, at the time -- you said you've been doing domestic violence for a
19 long time; correct?

20 A Yes.

21 Q That's not your focus, but it's just any officer on duty is bound to come
22 across these situations; correct?

23 A Correct.

1 Q Sort of the flip side of the coin is that a lot of times you get two very
2 different recitations as to what happened.

3 A Correct.

4 Q And sometimes it's not really for you to figure out what happened, but
5 leave it to the Courts to figure out the situation down the road; correct?

6 A Uh --

7 Q Let me put it another way. In many instances you're left with what I'll
8 call a he said/she said situation.

9 A That can occur.

10 Q Now, in this case there was some independent witnesses in the house
11 at the time; correct?

12 A That was discovered later.

13 Q You hadn't spoke yet with --

14 A Yea, at that point I did not know, you know, who was where.

15 Q So, it was at a later time then that you got further input from other
16 people that were in the house; correct?

17 A I didn't get any further input.

18 Q Officers, or the Courts, or somebody did; correct?

19 A Okay. Okay.

20 Q So, then you go to the house and eventually the house is searched;
21 correct?

22 A As far as I know from other police officer's reports apparently it was.

23 Q You're sort of in charge of this investigation; are you not?

1 A Absolutely not in charge; no.

2 Q Okay. So, you're one of the people. But, you reviewed the reports?

3 A I reviewed my report.

4 Q And as was stated, you were made aware that there was a weapon
5 found in the house?

6 A Yes.

7 Q And the weapon, well, you've already described the weapon. The
8 weapon was found in the living room on a shelf in plain view; is that correct?

9 A I can't testify to that because I didn't find the weapon.

10 Q That was your understanding from the investigation and your review of
11 the reports?

12 A That wasn't -- no, because I never -- that's the first time I've ever heard
13 that information.

14 Q Okay.

15 MR. RION: Can I approach the prosecutor
16 for just a second?

17 THE COURT: Sure.

18 (WHEREUPON, Court went off the record briefly.)

19 MR. RION: May I approach the witness?

20 THE COURT: Sure.

21 Q Attached to the report that you headlined -- was Officer Holman part of
22 the investigation from what you can tell?

23 A I believe Officer Holman was on the S.W.A.T. team at that point and

1 time. So, yes.

2 Q Still speak up for the jury, not for me.

3 A Oh, I'm sorry. I'll sit back.

4 Q It says here, and I know we're referring to his report, and everybody
5 understands that, - it says, 'I located a black Walther co2 power pistol lying on
6 a shelf in the living room. The pistol was in plain view'.

7 A That appears to be what Officer Holman wrote; correct.

8 Q And you have no reason to -- you have no information contrary to what
9 Officer Holman put in his statement relating to this event?

10 A No.

11 Q In the living room, on the shelf, in plain view was this pistol; correct?

12 A If that's what Officer Holman's report says; yes, sir.

13 Q That's what Holman said. Okay. Were you responsible for taking
14 Tarah -- fast-forward now to 2009. Did you take Tarah down to the police
15 station?

16 A No.

17 MR. RION: Nothing further. Thank you.

18 THE COURT: Any redirect?

19 **REDIRECT EXAMINATION**

20 **BY MRS. KOHLRIESER:**

21 Q Just one question for you based upon Mr. Rion asking about he
22 said/she said and two different recitations. Is that why the first thing you did
23 was try and knock on his door and talk to him?

1 A Sure. We would like to get his side of what happened.

2 Q Thank you. Oh, wait. Sorry. Did he give you his side?

3 A No.

4 Q Thank you.

5 THE COURT: Any recross?

6 **RECROSS EXAMINATION**

7 **BY MR. RION:**

8 Q There were other officers present that he obviously had contact with
9 that night; correct?

10 A According to the report it looks like he eventually was arrested. So,
11 yea, he must have come in contact with some other officers. But, I don't
12 know who.

13 Q Okay. And phone contact and everything else? Or, were you not a
14 part of all of that?

15 A I wasn't part of that, sir.

16 MR. RION: Nothing further.

17 THE COURT: All right. Sergeant, thank
18 you.

19 A Thank you, sir.

20 THE COURT: You're excused.

21 A Just leave this, sir?

22 THE COURT: Is that an exhibit?

23 MR. RION: No, it's not.

1 THE COURT: No, it's not an exhibit. All
2 right. State's next witness?

3 MRS. KOHLRIESER: Thank you, your
4 Honor. The State would call Officer Aaron Montgomery.

5 THE COURT: As the next witness is
6 coming forward, ladies and gentlemen of the jury, when we have these
7 breaks for witnesses if you feel like you want to stand up and stretch or
8 whatever to keep the blood flowing, by all means do that. This would be a
9 good time when nobody is on the stand. I know after lunch sometimes it's
10 nice to get the blood flowing.

11 WHEREUPON, called to appear as a witness in this proceeding was one:

12 **PATROLMAN AARON MONTGOMERY**

13 who, having been duly sworn by the bailiff herein, testified as follows:

14 BAILIFF: He has no objection.

15 THE COURT: All right. Thank you. Go
16 ahead.

17 **DIRECT EXAMINATION**

18 **BY MRS. KOHLRIESER:**

19 Q Can you state your name for the record, please?

20 A Yes, Patrolman Aaron Montgomery.

21 Q Even though you just said Patrolman and we can see your uniform, for
22 the record, can you state your place of employment?

23 A I work third shift for the Lima Police Department. I'm a K-9 officer.

1 Q And when did you start working with the Lima Police Department?

2 A 5-19 of '08.

3 Q So, back on February 23rd of '09 you were a fairly new officer?

4 A That's correct.

5 Q Were you working that day?

6 A Yes, I was.

7 Q And do you recall what shift you were working that day?

8 A That would have been first shift, seven A. to three P.

9 Q Okay. So, seven A.M. to three P.M.?

10 A Correct.

11 Q And do you recall learning of a homicide that morning?

12 A Yes, I do.

13 Q And were you part of the uniformed officers at the scene or anything?

14 A No, I wasn't.

15 Q Did there come a time that morning when you were requested to stop a
16 vehicle that was driven by Markelus Carter?

17 A Yes, I was.

18 Q And did you stop that vehicle?

19 A That's correct.

20 Q Do you recall where you stopped that vehicle?

21 A Yea. At the intersection of Spring and Jameson.

22 Q Just for the record, explain to the jurors how is it that you get calls?

23 What happens?

1 A A lot of times, well, in this situation it would have been what we refer to
2 as our Drug Unit, who a lot of times investigates either serious crimes or
3 anything relating to obviously drug investigations. They're not in marked
4 patrol units for the reason of maybe surveillance - getting into an area or
5 watching something that we may not be able to do in a uniform, or, marked
6 cruiser. A lot of times what they'll do is they'll either get a violation or they'll
7 have something in the investigation that requires for a marked officer in a
8 uniform and a marked patrol car to stop them so there's no confusion when
9 this person is being stopped that it's an actual police officer. So, what
10 happened was they requested and they were giving out directions this day of
11 where they were traveling and the type of motor vehicle, a description and,
12 like I said, the direction of travel and then they asked for me to stop it
13 because I'm in a marked L.P.D. patrol car.

14 Q Okay. So, when an investigative unit, whether it's the Drug Unit or
15 detectives, say, 'hey, we want you to stop this car', you follow their directions?

16 A Yes.

17 Q Okay.

18 A Yep.

19 Q Now, can you describe for the jury what happened when you stopped
20 that vehicle?

21 A I stopped it at the intersection of Spring and Jameson facing
22 westbound. I approached on the driver's side. I gave my name, who I was,
23 and I asked for identification from Mr. Carter, who was the driver of the motor

1 vehicle that day. Then as I spoke with him and requested his identification,
2 insurance, and registration then one of the investigative officers came up on
3 the driver's side and then asked for Mr. Carter to exit.

4 Q And within seconds, or a minute or so of that stop, did other, well, I
5 guess what we'll call plain clothes investigators show up as well?

6 A Yes. There was probably maybe four or five, maybe, right in there,
7 three to five.

8 Q Do you recall Detective Clark showing up?

9 A Yes. Yes.

10 Q Now, once they show up are they dealing primarily with talking with
11 him?

12 A Yea. I kind of -- well, at that point when I'm stopping a car for an
13 investigative unit there's obviously something that they know that I may not.
14 So, I kind of just do what I need to do until they kind of take over. I kind of
15 step back and at that point they were talking to Mr. Carter.

16 Q Shortly thereafter were you asked to drive Mr. Carter to the police
17 station?

18 A Yea, that's correct. I transported him from the traffic stop there at
19 Spring and Jameson to L.P.D.

20 Q And that was in your cruiser?

21 A That's correct.

22 Q Now, in this type of situation do you allow him to ride in the front seat?

23 A No. Our policy is we don't allow anybody to ride in the front seat.

1 Q So, he was in the back?

2 A That's correct. I don't believe he was handcuffed.

3 Q Now, the person that you described as stopping and things of that
4 nature, and you kind of did a hand gesture a few minutes ago, do you see him
5 in Court today?

6 A Yea. Right here - Mr. Carter.

7 Q Could you describe something he's wearing?

8 A A vest with a tie and a light blue shirt.

9 Q Okay. The stop of the defendant's vehicle and the subsequent
10 transport, were those things recorded?

11 A That's correct.

12 Q I'm going to hand you what's been previously marked as State's exhibit
13 '97'. I'd ask you to take a look at that.

14 A Yep.

15 Q Now, for the record, what physically are you holding?

16 A It's just a DVD. It's going to be my cruiser video, I believe, the day the
17 traffic stop occurred.

18 Q And you've actually had a chance to review that?

19 A Yes, that's correct.

20 Q Now, back in 2009 did we have convenient little DVD recordings?

21 A No. They would have been tapes at that point.

22 Q VHS tapes?

23 A That's correct.

1 Q So, this would be a conversion of those tapes to this?

2 A Yes.

3 MRS. KOHLRIESER: Your Honor, at this
4 time I'm going to attempt to play State's exhibit '97'.

5 THE COURT: Okay.

6 MRS. KOHLRIESER: It was working a few
7 minutes ago, your Honor. It seriously was working right before we came in.

8 THE COURT: Do you want to take a short
9 recess and get the equipment in order?

10 MRS. KOHLRIESER: Here's my concern,
11 your Honor, because our next witness has some technology that he's bringing
12 to help demonstrate some things and we're going to need a short break to
13 hook him up. All right, your Honor, if we could have a short recess. I
14 apologize.

15 THE COURT: All right. Ladies and
16 gentlemen of the jury, this happens, unfortunately. I can't program my VCR
17 at home. So, we'll take a short break so they can figure this out. It's not the
18 Court's equipment, I'll tell you that much. It's the prosecutor's equipment.

19 Remember the admonitions. Don't discuss the case among
20 yourselves or with anyone else. Stick around close by. I don't think that it
21 should take very long. All right. We'll stand in recess.

22 (WHEREUPON, COURT WAS IN RECESS.)

23

1 THE COURT: Back on the record in
2 CR2014 0139, State of Ohio -vs- Markelus Q. Carter. It's September 11th,
3 2015. The defendant is present with counsel. The State is present. The
4 jurors are all back. Patrolman Montgomery is on the stand.

5 We've got the electronic issues resolved, we hope.

6 MR. MILLER: I think all I have to do is
7 push a button.

8 THE COURT: You may continue then.

9 **DIRECT EXAMINATION OF PTL. AARON MONTGOMERY CONTINUED**

10 **BY MRS. KOHLRIESER:**

11 Q Before he pushes it, do you see some numbers up there at the top?

12 Now, again, this is a DVD that copied your VHS tapes; correct?

13 A That's correct.

14 Q Okay. I'm not going to get into too much. Is the date reflected up
15 here?

16 A Yea, 2-23 of 2009.

17 Q Okay. Can you see the time on there?

18 A It looks like eight forty-eight, which would be zero eight forty-eight in
19 the morning, I believe is what it says.

20 Q Okay. Does it have milliseconds - it's eight forty-eight and -- well,
21 seconds, not milliseconds.

22 A Yea; correct.

23 Q Okay. Now I'm going to play it. For the record, we're starting at one

1 oh seven forty-nine on the ticker here at the top.

2 (WHEREUPON, State's exhibit '97' was played in open Court.)

3 THE COURT: Do you want to turn it up a
4 little so we can hear it?

5 MRS. KOHLRIESER: It's just radio traffic.

6 THE COURT: Oh.

7 (WHEREUPON, State's exhibit '97' continued to be played in open Court.)

8 Q What road are you now turning on?

9 A Metcalf and Spring. We go right and westbound on Spring, I believe.

10 (WHEREUPON, State's exhibit '97' continued to be played in open Court.)

11 Q Do you know whose cars those are you're passing?

12 A I'm sorry?

13 Q Do you know whose cars those are you're passing?

14 A Yea. That's some of the detectives and other investigative officers.

15 (WHEREUPON, State's exhibit '97' continued to be played in open Court.)

16 Q Is that you we see in the shot at this moment at eight fifty-two?

17 A That's correct.

18 (WHEREUPON, State's exhibit '97' continued to be played in open Court.)

19 Q Who's the gentleman who just crossed over --

20 A Jason Bugh -- Investigator Jason Bugh.

21 (WHEREUPON, State's exhibit '97' continued to be played in open Court.)

22 Q What's Investigator Bugh doing now?

23 A Performing a pat-down to make sure there's no weapons in his

1 possession on the exterior of his clothing that he might feel.

2 Q And who just pulled up in front of the black car?

3 A It looks like Detective Clark, I believe.

4 (WHEREUPON, State's exhibit '97' continued to be played in open Court.)

5 MRS. KOHLRIESER: For the record, your

6 Honor, I'm stopping the tape at I believe the L.P.D. cruiser time of eight

7 fifty-eight, excuse me, eight fifty-nine and twenty-eight seconds. The clock at

8 the bottom is one eighteen twenty-seven.

9 THE COURT: Okay.

10 Q Now, does the video that we just watched truly and accurately reflect

11 your interaction with the defendant that day?

12 A Yes, it does.

13 Q And just a couple of things. The various men that we see moving in

14 and out of the shots once the defendant's vehicle is stopped, are any of those

15 what I would call civilians?

16 A No. Those were all police officers.

17 Q Okay. And is that what you were talking about - the Drug Unit?

18 A Yes, that's correct.

19 Q Unlike Detective Clark who shows up a little bit dressier, they typically

20 dress down like we see in the video?

21 A Yes.

22 Q And at some point did it appear on the video to you and is it your

23 recollection that Detective Clark was actually attempting to speak with the

1 defendant?

2 A Yes.

3 Q And once you got to the station the video ends. Where did you take
4 him to?

5 A I just remember taking him into L.P.D. There was another investigator
6 or detective and I don't remember, or, recall if he was directly taken upstairs,
7 but I know he was secured either in a holding cell downstairs or upstairs.

8 Q But, you didn't actually place him under arrest; did you?

9 A No, he was never placed under arrest.

10 Q So, I guess, the contents of how that stop and everything was decided,
11 that's beyond you?

12 A That's correct.

13 MRS. KOHLRIESER: Nothing further at
14 this time.

15 THE COURT: Questions, Mr. Rion?

16 **CROSS EXAMINATION**

17 **BY MR. RION:**

18 Q Good afternoon, sir.

19 A Hi. How are you?

20 Q I'm fine. Yourself?

21 A Good.

22 Q I have very few questions. The tape is fairly self-explanatory. That's
23 your voice in the front; correct?

1 A That's correct.

2 Q And you didn't have a reason to stop him? You were just following
3 orders of what other people told you to do; is that correct?

4 A That's correct.

5 MR. RION: Nothing further.

6 THE COURT: Okay. Any redirect?

7 MRS. KOHLRIESER: No.

8 THE COURT: Okay. Officer, you're
9 excused. Thank you.

10 A Thank you.

11 THE COURT: Next witness?

12 MRS. KOHLRIESER: The State's calling
13 Kevin DeLong. He's the one that I said may have to hook up some things.

14 But, given his area of expertise --

15 THE COURT: You'll see if he can do it real
16 quick?

17 MRS. KOHLRIESER: Yes.

18 THE COURT: Okay.

19 MRS. KOHLRIESER: You might want to
20 stretch, but I don't think we'll need a break.

21 THE COURT: Yea, again, folks, if you feel
22 like standing up and stretching now is the best time to do it, when we're
23 in-between witnesses.

1 WHEREUPON, called to appear as a witness in this proceeding was one:

2 **KEVIN DELONG**

3 who, having been duly sworn by the bailiff herein, testified as follows:

4 MRS. KOHLRIESER: If I could have just a
5 second, your Honor?

6 **DIRECT EXAMINATION**

7 **BY MRS. KOHLRIESER:**

8 Q Good afternoon.

9 A Good afternoon.

10 Q Would you state your name for the record?

11 A Kevin DeLong.

12 Q And can you tell these folks what your current occupation is?

13 A I'm the vice-president of global training for mobile forensics for a
14 company called Synticate.

15 Q What do you do for them?

16 A I develop all the research and development of the curriculum and we
17 teach multiple three letter agencies from around the globe.

18 Q Multiple three letter agencies?

19 A Yes.

20 Q Would you tell us an example?

21 A Our clients are C.I.A., F.B.I., Secret Service - okay, one more than
22 three letters, but the major agencies from not only the United States, but the
23 U.K., Germany, Croatia, and multiple countries throughout the world.

1 Q And where were you employed prior to going with this company?

2 A Lima Police Department.

3 Q Okay. And what did you do for the Lima Police Department?

4 A I worked in a digital forensics lab where we managed the intake of
5 digital evidence, processed the evidence, occasionally went on search
6 warrants and collected the evidence and kind of interpret all the data that we
7 found to make it easier for someone who's non tech. savvy to understand
8 exactly what happened on the system.

9 Q How long were you with the Lima Police Department?

10 A Just shy of fifteen years.

11 Q And when did you leave?

12 A In July of 2012.

13 Q And why did you leave?

14 A The private sector offered me a little bit better financial future.

15 Q Okay. Before that, while you were employed at L.P.D., you had side
16 jobs; correct?

17 A Yes.

18 Q What kind of things did you do computer and mobile device wise?

19 A The company that I eventually ended up going to work for full-time I
20 contract work with them and so when I had days off from the Police
21 Department I would go and travel and teach for them a new thing for mobile
22 forensics.

23 Q Okay. Have you taught any college courses?

1 A Yes. I was an adjunct professor at Ohio Northern University in Ada for
2 several years.

3 Q And what did you teach there?

4 A It was an introductory course to computer forensics and with a little bit
5 of mobile forensics mixed in.

6 Q What do you mean by computer forensics and mobile forensics?

7 A So, computer forensics and mobile forensics, well, you kind of think of
8 technology as just technology. They're actually very separate on how a lot of
9 the technologies work. So, computer forensics typically deals with desktop
10 computers, laptop computers, and things of that nature. When we start
11 talking mobile forensics, mobile forensics are more of like the cellular devices,
12 along with I-Pads and any android tablets, windows tablets, and stuff like that.

13 Q I guess smaller hand-held type, well, that promotes themselves to go?

14 A Yea.

15 Q Okay. All right. Now, which division of the Lima Police Department
16 were you assigned to prior to leaving?

17 A Technology crimes unit.

18 Q And did that also -- was part of that part of the P.A.C.E., the P.A.C.E.
19 unit?

20 A Yes.

21 Q Okay. Can you explain to these folks what the P.A.C.E. unit is?

22 A Okay. P.A.C.E. was a pro-active crime enforcement unit. So, kind of
23 our role was to go out and obviously be pro-active within the community to

1 build relationships with the community and respond to crimes. A lot of it
2 ended up being narcotic investigations and things of that nature.

3 Q Now, with, and I'll just call it technology in general, what sort of
4 specialized training or education do you have to do that kind of stuff?

5 A Okay. So, initially I started going to some of the police department
6 sponsored events - the N.W.3-C, which is the National White Collar Crime
7 Center, where I received my initial training in computer forensics. There was
8 multiple stages of training through them. Also, some sponsored training
9 through the F.B.I. Then I started attending some of the vendor based training
10 to utilize how their tools function, how they interact with the data and the
11 software, from guidance software to access data software where I'm
12 employed now. So, it's been multiple courses throughout. I think I got started
13 right around 2002/2003.

14 Q But, now your job is to train people?

15 A Yes, and to develop the curriculum to do that.

16 Q Do you still get some sort of training, or do you figure it out yourself?

17 A Yea, that's the trick. The training doesn't exist and so we create it. We
18 do the initial research and development. If a new phone or new device
19 comes out and we can't figure out how it's storing the data we actually start
20 reverse engineering it - how does it work; how is it storing the data. Then we
21 create the curriculum and we actually create curriculums for a lot of the
22 universities across the United States, as well as, you know, some of the
23 government agencies and private sector.

1 Q So, you teach the teachers?

2 A Yes.

3 Q Okay. I'll hand you what's been previously marked as State's exhibit
4 '163'. I'll have you take a look at that.

5 A Certainly.

6 Q For the record, does that appear to be a two page document, front and
7 back?

8 A It does indeed.

9 Q And do you recognize that?

10 A Yes, I do.

11 Q What is that?

12 A It is my C.V., or experience in the technology realm.

13 Q Does it list your work experience?

14 A Yes, it does.

15 Q Does it list your computer training and mobile technology training and
16 things of that nature?

17 A It does.

18 Q Now, over the years that you've been doing this how many computer
19 forensic examinations would you say you've performed over the years?

20 A Oh, goodness. I would go in the hundreds.

21 Q Okay. What about cellular phones, Smart phones, whatever you want
22 to call them, I-Pads?

23 A Those are a little quicker normally to do. So, we're probably coming up

1 to the thousand point.

2 Q And do you have any sort of certifications?

3 A Yes. I hold an access data mobile examiner certification. I also hold a
4 mobile examiner certification, which is from a private organization. Then I
5 also have the access data certified computer examiner certification as well.

6 Q How do you get those certifications?

7 A You take a series of tests. They present you with a data set or a
8 scenario. I'll give you the most challenging one that I went through and it was
9 a scenario base. You get sent some mobile devices and you have to process
10 them in a certain way to get expected results through a scientific method
11 where they can compare the data that I received based on the data that the
12 certifying body knows that they put on there. So, if you obviously get those
13 results back and you can present it in that fashion and you know they handle
14 it in a certain way. So, that process was probably about three months of just
15 that certification alone.

16 Q And have you ever testified in Court as an expert in forensic computer
17 analysis and mobile data forensic technology?

18 A Yes, I have.

19 Q Do you know approximately how many times you've testified? I'll
20 spring this one on you.

21 A Yea, I'm not sure how many, but it was here in Allen County.

22 Q So, you've been qualified as an expert in Allen County?

23 A Yes.

1 MRS. KOHLRIESER: Your Honor, at this
2 time I would move to have him qualified as an expert in forensic computer
3 analysis and mobile data forensic technology.

4 THE COURT: Mr. Rion, anything?

5 MR. RION: No objection.

6 THE COURT: Okay. Well, with no
7 objection, the Court will put on the record and make the finding that Mr.
8 Delong is qualified to testify as an expert in the computer and mobile
9 forensics.

10 MRS. KOHLRIESER: Thank you.

11 Q Now, in February of 2009 were you assigned to the investigations
12 division at that time?

13 A Technology unit; yes.

14 Q Technology. And specifically on February 23rd, 2009 were you asked
15 to participate in the execution of a search warrant at 122 East Eureka?

16 A Yes, I was.

17 Q And did you do that?

18 A I did.

19 Q All right. What was your role during that search?

20 A My role was to handle all the technology based pieces of evidence that
21 we came across - computer systems; mobile devices; flash drives; anything
22 that had to support technology or could possibly contain evidence that may
23 support the investigation.

1 Q Okay. And were a number of items that I'll just refer to collectively as
2 electronic technology seized --

3 A Yes.

4 Q -- during this search?

5 A Yes.

6 Q And you would have been the person that seized them?

7 A Yes.

8 Q Why is that?

9 A There's a certain way that you have to handle pieces of electronics.
10 Even though you may not think a computer system is doing anything as it's
11 just sitting there, you know, no one is using it, well, it's actually doing quite a
12 bit. So, it's just a way they have to collect it - shut down the machines and
13 collect the machines. So, I was trained in that and so I was the one that
14 ultimately felt responsible for those collections.

15 Q And the purpose being to keep it as it is?

16 A Yea, keep it as it is as much as possible. Absolutely.

17 Q Now, once that evidence was seized were you tasked with analyzing
18 all of that?

19 A Yes.

20 Q Okay. All right. I'm going to hand you what's been previously marked
21 as State's exhibit '102' and ask you whether you recognize that as the house
22 that was searched?

23 A Oh, absolutely. Yea. This was the house that we served the search

1 warrant at.

2 Q Okay. On February 23rd of 2009?

3 A Yes.

4 Q Is that what we see on the big screen here?

5 A Yes.

6 Q All right. Again, when these searches happen is there someone that
7 keeps like an evidence log of what's being taken?

8 A Yes.

9 Q Do you recall off the top of your head who that person would have
10 been?

11 A I'm not sure back in 2009 who that would have been.

12 Q I'll show you State's exhibit '105'. I'd ask you to take a look at that.

13 A Oh, certainly.

14 Q Do you recognize what's depicted there?

15 A Yes. There's a laptop. This appears to be the front room of the
16 residence, or, the living room of the residence with a laptop that's on a stand
17 there.

18 Q Okay. Was that seized during the search?

19 A Yes.

20 Q Is this what you're talking about in the middle of the picture on the little
21 table there?

22 A Yes, right there.

23 Q And then State's exhibit '108'. I'd ask you to take a look at that.

1 A Certainly.

2 Q Do you recognize that?

3 A Yes, I do. This, I think, if memory serves me correctly, I can't see the
4 front door, but I believe this was the door that was directly off of the porch.
5 You walk into this area and then the staircase, the dining room, and then the
6 front room kind of off of that.

7 Q For the record, these last few exhibits I've shown you were all
8 photographs; correct?

9 A Correct.

10 Q And do they fairly and accurately reflect what 122 East Eureka looked
11 like on the day you searched it?

12 A Yes.

13 Q Does this one show another computer in this picture?

14 A Yes.

15 Q There's multiple items here as well. Do you recognize what those are?

16 A Correct. I see the computer system there. There were multiple things
17 that were on top of the desk as well. We collected flash drives and multiple
18 things throughout.

19 Q The bigger boxes lying in the middle of the picture there, are those
20 what I guess are commonly called computer towers inside there?

21 A Correct.

22 Q Okay. What's a computer tower's function?

23 A It's just a computing device. Typically they can be used in any type of

1 environment - home environment; office environment. Can you clarify the
2 question a little bit?

3 Q Okay. I guess, well, what's housed in a computer tower?

4 A Oh, goodness. Hard drives for storage of digital evidence.

5 Q Is it basically the meat of the computer? The monitor is just what you
6 look at; right?

7 A Right. Right. That's where you're just seeing it with the monitor. They
8 keyboard and stuff are all extra. So, the meat of the computer, as you put it,
9 was exactly the tower.

10 Q And exhibits '115' and '116'.

11 A Yea. This appears to be the back room, or what appeared to me as a
12 studio of some type of that residence as well with multiple computer
13 components there as well.

14 Q And were those seized as well?

15 A Yes, they were all seized.

16 Q And '115' and '116', do they fairly and accurately depict what you saw
17 that day in that house?

18 A Yes.

19 Q All right. There were other items as well that I'm not showing you
20 pictures of; correct?

21 A Oh, yes.

22 Q Were there small items, too, that we can't see that are forensic
23 technology?

1 A Yea. If I recall, there were thumb drives. You know, generally so
2 large.

3 Q What's housed on a thumb drive?

4 A Data can be stored on there. The amount depends on the size of the
5 architecture of the device itself. Portable hard drives, which is just, I don't
6 know, they're normally about wallet sized, a man's wallet size, and they can
7 store, again, any amounts of data as well on that.

8 Q Okay.

9 A They're designed to be portable so you can move the data around.

10 Q So, you had quite a few items that you were tasked with looking at?

11 A Yes. Yes.

12 Q Okay. Now, at that time what was your work load like?

13 A The entire time I was in the lab at L.P.D. generally we were looking at
14 several months behind to even start the case due to just the work load.

15 Q Okay. Now, did you also do computer and mobile exams for agencies
16 other than the Lima Police Department?

17 A Yes. We had just formed a task force and so we were doing computer
18 exams for the Allen County Sheriff's Office, with Defiance County, and we
19 were in works with getting information or data from the Wapak Police
20 Department and the Celina Police Department. So, we would do them for
21 multiple different agencies. Because the State agency was so far behind,
22 even more so than what we were at that time, it was easier to bring
23 something locally to be processed.

1 Q When you say 'we', in 2009 who was we?

2 A Me and Scott Leland was also there, I believe, at that time. Maybe not.
3 I also had a couple of part-time guys that would come in and out.

4 Q Okay. Scott Leland was actually a detective at the time; wasn't he?

5 A Yes. Yes, he was.

6 Q Was his primary focus --

7 A His primary focus was a detective investigating crimes. He was just
8 starting to kind of move over into the technology and so he would come out to
9 the lab occasionally.

10 Q Okay. Was he actually still going through training and things of that
11 nature?

12 A Yes.

13 Q And, now, these types of exams that we're talking about here, do they
14 take a few minutes?

15 A Wow. If everything went like C.S.I. on television it would make my job
16 a lot easier. But, it doesn't. Unfortunately, the volume of data that you're
17 looking through -- well, you know, if you imagine just a simple sixteen gig,
18 which a gig is the way we determine how much data that the device can
19 store, so a sixteen gig, just a phone, imagine that, if you would actually print
20 out line per line all the code that would be in there, well, it would be taller
21 than, oh goodness, the Empire State Building paper-wise. That's a thumb
22 drive that we would be looking at. So, when you're talking about the hard
23 drives and that, well, the volume of data just starts really picking up. Now,

1 granted we have a little bit of technique to help us a bit in those searches.

2 But, it does take awhile to do those.

3 Q Okay. Now, describe for these folks here on the jury what you would
4 do in a computer exam. You have a computer. I say, "Examine this, please."
5 What do you do?

6 A First we try to gain as much information about the particular case that
7 we can from the investigators. A lot of times I'll walk in on the scene and not
8 really have an understanding of what crime occurred. So, you gather the
9 information as much as we can to help narrow our search down a little bit
10 from that perspective. Then what we do is we take the systems individually
11 and do a full, well, what I call a work up on them. You take a look at them for
12 damage or anything of that nature. You see what types of storage that they
13 have, and the makes and models, and make sure that the device even
14 functions in the first place. Then we'll start removing the hard drives from
15 inside, which are the storage mechanisms of the computer systems. Then we
16 do what's called a forensic image of those. What a forensic image is is, well, I
17 guess imagine if you could clone yourself exactly down to the smallest
18 molecule and it's an identical copy of yourself. That's what we do with the
19 data that exists on that hard drive. We take it literally from the very first tiny
20 bit of information and copy it exactly from the beginning to the end and that
21 way we're working with a copy and not the original data set when we go to
22 look at it later on.

23 Q Why?

1 A Just so we don't change the original evidence. Evidence doesn't like
2 to live on hard drives too long. It likes to be spinning all the time. If you leave
3 them sit for awhile there's a chance of contamination/corruption that can
4 happen. So, we move them to a state where we can have a copy of it and
5 work with the copy and not touch the original. So, if there is something we do
6 need to pull out and change for a scientific method or purpose we can do that
7 and not have changed the original evidence.

8 Q Okay. So, once you get that and, let's talk about this case, were you
9 given information about the crime that you were searching for evidence of on
10 these technological pieces?

11 A Uh-huh.

12 Q Okay. Were you able to go straight away and start examining
13 everything?

14 A No.

15 Q Why was that?

16 A Just because of the volume of cases that were already being
17 processed currently. It's not like when a case comes in you just stop
18 everything that you're doing to deal with that case. There's other cases that
19 were already in the pipeline that we were already doing investigations. The
20 investigations were open doing searches and analysis and you just don't want
21 to stop that midway through because you have familiarity with the case and if
22 you stop it and have to go back to it, well, it just makes things a little bit
23 challenging for sure. So, it has its place in line. Obviously the severity of the

1 crime and stuff does tend to shift the priority around a little bit. But, for the
2 most part things do have to wait in line to get there.

3 Q Okay. Did there come a point and time when you were able to actually
4 begin your investigation into this?

5 A Yes. Yes. Yes, there was.

6 Q Was there a time when, I guess, the focus of what you were looking at
7 on the computer, based upon some other things you found, shifted?

8 A Yes, it did.

9 Q So, did that take your attention away from the homicide for awhile?

10 A Yes, it did.

11 Q Were you finally able to get back into the homicide part of it?

12 A Yes, for a short time. Yes.

13 Q Now, in January of 2010 were you able to sit down with Detective Clark
14 and explain, I guess, verbally to him what you had, in fact, found?

15 A Yes.

16 Q Among the things that you found on the various pieces of equipment
17 were you able to determine user names, passwords, and that type of thing to
18 link that information to the defendant, Markelus Carter?

19 A Yes.

20 Q What kind of things did you find?

21 A One of the user names was Markelus that I had found in there. Also,
22 there were multiple images of Markelus sitting in front of the computer system
23 as well.

1 Q Okay. What do you mean images of him sitting --

2 A It appeared to be snippets of, well, it's called thumb nail cash. So, not
3 to get too technical, what that is is anytime that an image is taken on the
4 machine, even if the machine has a webcam hooked up to it, it's stored
5 somewhere on the machine. Whether the user has access to certain areas or
6 not is a different story. In most cases the user is not aware of these things
7 that are even going on. Sometimes they are. Sometimes they legitimately
8 take a picture of themselves. We call them selfies now. But, for the most
9 part, those are stored in what's called a thumb nail cash where Windows, in
10 particular, likes to store things all in one area that can quickly be referenced.
11 So, I did find some images there.

12 Q I'm showing you what's been previously marked as State's exhibit
13 '164'. By way of example, do you recognize what '164' is?

14 A Yes. Yes, it's one of those images I was just referring to.

15 Q On State's exhibit '164' do you see the person depicted in the picture
16 sitting in Court today?

17 A Yes, I do.

18 Q Okay. Can you point to him and tell us what he's wearing?

19 A Absolutely. He's sitting there and wearing the blue sleeves and the
20 dark blue sweater vest.

21 MRS. KOHLRIESER: Please let the
22 record the witness has identified the defendant.

23 THE COURT: Okay. So noted.

1 Q You could see him even though the lights were dimmed?

2 A Yes.

3 Q Now, for this next part, before we get into some of the details, I believe
4 you brought some visual aids for us?

5 A Yes.

6 Q Would you --

7 A Where would you like me to --

8 Q Feel free to --

9 A If Tony wouldn't mind flipping through them I could stay here.

10 Q Okay.

11 MRS. KOHLRIESER: If we could have just
12 a couple of minutes?

13 THE COURT: While he's hooking that up,
14 again, if anyone feels the need to stand up and stretch. I'm just trying to keep
15 everybody fresh.

16 MR. RION: May we approach, your
17 Honor?

18 THE COURT: Sure. Terri?
19 (WHEREUPON, Court and counsel had a brief discussion at the Bench, on
20 the record, as follows.)

21 MR. RION: Is this a demonstration or,
22 well, what is this?

23 MRS. KOHLRIESER: He's going to show

1 the --

2 COURT REPORTER: I can't hear you, Terri.

3 MRS. KOHLRIESER: I'm sorry. He's
4 going to show, for instance, what it looked like, well, the Auditor's website and
5 you could click on the house and the map and he's going to take them
6 through, you know, where he found that and what it looks like. It's the things
7 you have in the reports. It's just one or two of them. We're not getting into --
8 it's just one or two of them.

9 MR. RION: Is he going into the website on
10 what you could possibly look at on the website? Is that what you're saying?
11 Or, what was actually on the computer?

12 MRS. KOHLRIESER: That's a good
13 question. Can I ask him?

14 MR. RION: Maybe we could take a break
15 because this might be --

16 THE COURT: Okay.

17 (WHEREUPON, Court continued on the record, as follows.)

18 THE COURT: All right. I understand the
19 technology may be up and running because we have an expert in the room.
20 But, the parties have asked for a very short break so they can iron out a
21 couple of things. I'll grant that. I want to make sure this goes as smooth as
22 possible. So, I'll excuse the jurors. It shouldn't take a whole long time. Ten
23 minutes or so at the most. Remember the admonitions I've been giving you

1 on-going. Don't discuss the case, formulate any opinions, or express any
2 opinions. You folks can step out and we'll have you back in here shortly.

3 Counsel, let me know when you're ready to go. Okay?

4 (WHEREUPON, COURT WAS IN RECESS.)

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6 (WHEREUPON, VOLUME FOUR CONCLUDED.)

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